LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
MAR 12 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. [redacted] 44

AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN,
Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOSEPH FORER
DAVID REIN
Forer & Rein
711 14th St., N. W.
Washington 5, D. C.
Attorneys for Petitioner

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX

	Page
Opinion Below	2
Jurisdiction	2
Questions Presented	2
Statute Involved	3
Statement of the Case	4
Reasons for Allowing the Writ	12
A. Consequences of the decision below	15
B. The meaning of the aid component of section 3(4)	18
C. Constitutional questions	22
1. Vagueness	22
2. The First Amendment	23
3. Preclusion	24
D. Questions arising from the application of the control component	26
1. Lautner and the curtailment of cross-examination	26
2. Other Lautner testimony	28
3. Area Committees	29
4. The "thread of Communist interest"	30
Conclusion	34

Appendix A—The opinion below	1a
Appendix B—The judgment below	25a
Appendix C—Statute involved	26a

INDEX OF CITATIONS

Cases:	Page
Alford v. United States, 282 U. S. 687	27
Baker v. Carr, 369 U. S. 186	25
Barber v. Gonzales, 347 U. S. 637	8
Barton v. Sentner, 355 U. S. 2	8
Bonetti v. Rogers, 356 U. S. 691	8
Carlson v. Landon, 342 U. S. 524	8, 10, 33
Chastleton Corp. v. Sinclair, 246 U. S. 543	25
Chaunt v. United States, 364 U. S. 350	8
Chew v. Colding, 344 U. S. 590	8
Communist Party v. S.A.C.B., 367 U. S. 1	3, 23, 25
Cramp v. Bd. of Public Instruction, 368 U. S. 278	22
DeJonge v. Oregon, 299 U. S. 353	24
Dombrowski v. Pfister (E. D. La. 1964)	17
Eisler v. United States, 353 U. S. 857; 338 U. S. 189; 338 U. S. 883	31
Estes v. Potter, 183 F. 2d 865	32
Flemming v. Nestor, 363 U. S. 603	8
Galvan v. Press, 347 U. S. 522	10
Gastelum-Quinones v. Kennedy, 374 U. S. 469	8
Harisiades v. Shaughnessy, 342 U. S. 580	8, 10, 33
Heikkila v. Barber, 345 U. S. 229	8
Hyun v. Landon, 350 U. S. 990	8
Jay v. Boyd, 351 U. S. 345	8, 10
Kimm v. Rosenberg, 363 U. S. 405	8
Kirby v. United States, 174 U. S. 47	25
Maisenberg v. United States, 356 U. S. 670	8
N.A.A.C.P. v. Alabama, 357 U. S. 449	23
N.A.A.C.P. v. Button, 371 U. S. 415	23, 24
National Council of American-Soviet Friendship v. S.A.C.B., 322 F. 2d 375	21
Niukkanen v. McAlexander, 362 U. S. 390	8
Noto v. United States, 367 U. S. 290	25
Renaud v. Abbott, 116 U. S. 277	25
Rowoldt v. Perfetto, 355 U. S. 115	8, 10
Scales v. United States, 367 U. S. 203	24
S.E.C. v. Chenery Corp., 318 U. S. 80	30
S.E.C. v. Chenery Corp., 332 U. S. 194	30
Shelton v. Tucker, 364 U. S. 479	24
Talley v. California, 362 U. S. 60	24
United States v. Carolene Products Co., 304 U. S. 144	25

Page

United States ex rel. Doyle v. District Director, 169 F. 2d 753 31
United States v. Spector, 343 U. S. 169 ..... 8, 33
United States v. Witkovich, 353 U. S. 194 8

STATUTES:

Subversive Activities Control Act, 64 Stat. 987 ..... 2, 26a

Sec. 2 ..... 3, 20, 21
Sec. 2(6) 21
Sec. 2(7) 21
Sec. 3(3) 13
Sec. 3(4) 3, 4, 18, 20, 21, 24
Sec. 5(a) 5
Sec. 6 5
Sec. 7 2
Sec. 7(b) 4, 10
Sec. 7(c) 4
Sec. 7(e) 4
Sec. 9(b) 4
Sec. 10 5
Sec. 11 5
Sec. 13 3
Sec. 13(f)(3) 21
Sec. 13(g)(1) 1
Sec. 13A, 50 U. S. C. 792a 3
Sec. 14(a) 2, 10
Sec. 14(b) 5
Sec. 15 5

Sec. 10, Communist Control Act of 1954, 50 U. S. C. 792a 3

Alien Registration Act of 1940, 54 Stat. 670 33
8 U. S. C. 1251(a)(6)(D) 5
8 U. S. C. 1451(c) 5
20 U. S. C. 581(f) 5
28 U. S. C. 1254 2
42 U. S. C. 410(a)(17) 5
42 U. S. C. 1874(d)(2) 5

MISCELLANEOUS:

Chafee, The Blessings of Liberty (1956) 14, 16
Washington Evening Star, Sept. 14, 1962 17

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No.

AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN,
Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

American Committee for Protection of Foreign Born petitions for a writ of certiorari to review a judgment of the United States Court of Appeals for the District of Columbia Circuit (R. 116; Appendix B herein), which affirmed (Chief Judge Bazelon dissenting) an order of the Subversive Activities Control Board (R. 78), entered under section 13(g)(1) of the Subversive Activities Control Act of 1950, 64 Stat. 1000, 50 U.S.C. 792(g)(1), that petitioner

register as a Communist-front organization under section 7 of the Act, 64 Stat. 993, 50 U.S.C. 786.[1]

OPINION BELOW

The opinion below (R. 93; Appendix A herein) has not yet been reported.

JURISDICTION

The judgment below is dated and was entered on December 17, 1963 (R. 116). Jurisdiction of this Court is conferred by section 14(a) of the Act, 64 Stat. 1001, 50 U.S.C. 793, and 28 U.S.C. 1254.

QUESTIONS PRESENTED

1. Whether the provisions of the Act relating to the registration of Communist-front organizations are unconstitutional on their face or as applied in this case.

2. Whether an organization satisfies the Act's requirement that a Communist-front organization be "primarily operated for the purpose of giving aid and support to a Communist-action organization" (i.e., the Communist Party) by reason of engaging in peaceable activities for the forwarding of innocent objectives—specifically, in this case, defending by litigation and other lawful means the rights of any foreign-born who seek its help.

3. Whether an organization accused of being a Communist-front organization may be conclusively bound by a Board finding, made in an earlier proceeding to which the

---

[1] The Subversive Activities Control Act, as amended, is Title I of the Internal Security Act of 1950, 64 Stat. 987, and is hereafter referred to as the Act. The Subversive Activities Control Board is hereafter called the Board. "Tr." refers to the original transcript of record, which has been filed with the Court in addition to the certified record ("R."). "P. Ex." refers to an exhibit introduced at the administrative hearing by the Attorney General. "R. Ex." refers to an exhibit introduced at the administrative hearing by petitioner (respondent at the hearing).

accused organization was not a party, that the Communist Party is a Communist-action organization.

4. Whether the court below accorded a fair and adequate review of the findings and conclusions of the Board.

5. Whether the evidence supports the order of the Board.

6. Whether the Board erroneously curtailed cross-examination of a key witness for the Attorney General.

7. Whether an organization may be found to be a Communist-front organization on the basis of evidence and findings concerning other organizations with which it cooperates but which it does not control.

8. Whether the order of the Board and its affirmance below rest on irrelevant considerations and incompetent evidence.

STATUTE INVOLVED

Pertinent provisions of the Act are set forth in Appendix C herein.

STATEMENT OF THE CASE

This is the first case to present to the Court an order requiring an organization to register as a Communist-front organization under the Act.

The Act

Section 13 of the Act provides for administrative proceedings before the Board, instituted by petitions of the Attorney General, to determine whether accused organizations shall be ordered to register as "Communist-action" or "Communist-front" organizations.[2] On April 20, 1953,

[2] The Act also authorizes the Board to declare whether organizations are "Communist-infiltrated" organizations. Such organizations are deprived of the benefits of the National Labor Relations Act, but are not required to register. Sec. 13A, added by sec. 10 of the Communist Control Act of 1954, 50 U.S.C. 792a.

in the first case brought under the Act, the Board ordered the Communist Party of the United States of America to register as a Communist-action organization (R. 24). That order was eventually sustained in *Communist Party* v. *S.A.C.B.*, 367 U.S. 1 (four Justices dissenting).

A Communist-front organization is defined by section 3(4) of the Act as one "which (A) is substantially directed, dominated, or controlled by a Communist-action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title."[3]

A Communist-front organization is required to register as such with the Attorney General (sec. 7(b)). It must also file with the Attorney General a registration statement showing the names and addresses of its officers, an accounting for the preceding twelve months of all moneys received and expended, including the sources from which received and the purposes for which expended, and a listing of all printing and duplicating facilities possessed, owned or controlled by the organization, its officers and members (sec. 7(c)). Annual reports must be filed to keep the registration statement current (sec. 7(e)). The registration, registration statements and annual reports must be kept open for public inspection (sec. 9(b)).

The organization must label any publication which it distributes through the mail or interstate or foreign commerce with the legend, appearing on both the publication and the outside envelope or wrapper, "Disseminated by ....., a Communist organization." Its radio and television broadcasts must be announced as sponsored by

[3] The references in section 3(4) to a Communist foreign government and the world Communist movement are not applicable here, since petitioner was found to be controlled by, and primarily operated for the purpose of giving aid to, the Communist Party, "a Communist-action organization" (R. 74).

a Communist organization. (Sec. 10) Contributions to the organization are not tax deductible, and the organization itself is denied tax exemption (sec. 11). Service in the employ of the organization is not considered employment for social security purposes (42 U.S.C. 410(a)(17)). Employees of the government or of any privately owned "defense facility" may not contribute funds or services to the organization (sec. 5(a)(2)).

Members of the organization may not use or apply for passports (sec. 6). They may not hold employment with the federal government or any labor organization, and must disclose their membership when seeking employment in any defense facility (sec. 5(a)). They may not apply for fellowships or loans under the National Defense Education Act (20 U.S.C. 581(f)) or for National Science Foundation scholarships or fellowships (42 U.S.C. 1874(d)(2)). If aliens, they may not be naturalized and are subject to deportation (8 U.S.C. 1251(a)(6)(D)). If recently naturalized, they are prima facie liable to denaturalization (8 U.S.C. 1451(c)).

These consequences apply when the order becomes final by virtue of the exhaustion of judicial review (sec. 14(b)). The Act imposes severe criminal penalties for failure to register after a registration order has become final and for violation of the Act's sanctions on the organization and its members (sec. 15).

The Petitioner

Petitioner, an unincorporated association, was formed in November 1933 by the American Civil Liberties Union and several labor union locals (P. Ex. 242). Its purpose, as stated in its Constitution, is to promote the interests of the foreign-born in the United States "regardless of race, color, nationality, creed, or place of birth" (R. 49).

Petitioner's governing authority is its Annual Conference (R. Ex. 88). Notice of the Annual Conference is

given by sending thousands of calls to organizations and individuals who may be interested in attending. Anyone may attend the Conference either as an individual or as a delegate of an organization. Upon registering and paying a registration fee of one or two dollars, he may participate fully in the Conference's deliberations and actions, including the election of petitioner's officers and the adoption of its policies and programs. The Conferences have been attended by as many as 300 to 400 people, including delegates from various organizations (nationality, trade union, church, civil liberties, and women's groups, etc.). (R. 63; Tr. 4874-81, 4136-41; 4600-01.)

Petitioner's top staff official is its Executive Secretary. Abner Green joined petitioner's staff in 1936, became Executive Secretary in 1941, and held that position continuously thereafter. During his tenure as Executive Secretary, Green was the leading figure in the operation of petitioner and its affairs.[4] (R. 36.)

Petitioner's office is in New York City (R. 28). There also exist various local or regional Committees for Protection of Foreign Born, such as a Los Angeles Committee for Protection of Foreign Born, a New England Committee for Protection of Foreign Born, etc. (R. 29), which we here call Area Committees.

The Area Committees sometimes referred to themselves as chapters, branches or affiliates of petitioner, and petitioner sometimes referred to the Area Committees in similar terms. Simultaneously, petitioner would state that the Area Committees were not its branches or affiliates. (R. 30-35; Tr. 5184).

Disregarding nomenclature, the evidence is uncontradicted as to the relationship between the Area Committees and petitioner. Petitioner encouraged the formation of Area Committees and took the initiative in getting some of

[4] Mr. Green died on September 9, 1959.

them organized (Tr. 5296-97, 5138, 5143-46). Other Area Committees were organized without petitioner's participation and sometimes without its knowledge (Tr. 5172-74, 5225-26, 5230, 5261-62, 5274-75). Generally, formation of Area Committees was an outgrowth of the initiation of deportation cases in the area which aroused local concern or indignation (Tr. 4132, 5292-96). The Area Committees work along lines and have announced policies similar to those of petitioner. Petitioner and the Area Committees exchange literature and otherwise cooperate. Petitioner, however, neither has nor exercises authority or control over the Area Committees. They elect their own officers, decide their own policies, methods and activities, raise and spend their own funds as they see fit—all without intervention or direction of petitioner. Thus each Area Committee is completely its own master and independent of any other Area Committee and of petitioner. (Tr. 4132-36, 4433, 4494, 5121-22, 5127, 5130-43, 5805-07; R. 31, 34.)

Throughout its history petitioner has engaged in a vast variety and scope of activities relating to almost every conceivable issue involving the rights of the foreign born, and it has issued a tremendous volume of literature, of which the record contains a sampling. Its work includes educational projects and material, legislative work, mounting public campaigns on legislation and matters of interest to the foreign born, technical assistance to applicants for naturalization, legal defense work, etc.[5]

Petitioner has always opposed the deportation of resident aliens and the denaturalization of naturalized citizens, no matter what the basis for the action (Tr. 5960-63, 4909-10, 4926-27, 5557). Thus in 1942 it opposed both denatural-

[5] See R. 61-62 and the numerous exhibits from both sides of issues of petitioner's publication, *The Lamp*, of proceedings of its Annual Conferences, and of its other publications. See also Tr. 5598-5603, 5676-77, 5683-5959, 5983-6058, 6088-98, 6113-16, 6180-97, 4102, 4957, 4956-62, 5376.

ization actions against members of the German-American Bund and other Nazi or fascist sympathizers and the denaturalization action against William Schneiderman, a leading Communist (Tr. 5325-28).

Petitioner's defense work consists of litigating or otherwise intervening in behalf of specific aliens or naturalized citizens involved in problems connected with their foreign origin. This defense work has included assistance to aliens being refused naturalization on various grounds, to aliens facing deportation charges, and to naturalized citizens facing denaturalization actions. (R. 61; A.G. Ex. 259, pp. 7-10; Tr. 5927-29, 5974-83, 6014-15, 6057-80, 6053-54.) Defense work also includes the issuance of literature on the cases appealing to the public to protest the deportation or denaturalization action and to contribute funds for the defense effort (R. 61-62, 65-68; R. Ex. 97, 174, 232; P. Ex. 2, 18).

Petitioner is publicly committed, and has never refused, to assist any individual who seeks its help in a deportation or denaturalization case, no matter what the charge involved (Tr. 4142-44, 5488-90). If desired, and if the case is defensible, petitioner supplies counsel and handles the litigation in the administrative and judicial proceedings, sometimes through this Court and often successfully (Tr. 4142-44, 5212-13, 5488-90; R. 65).[6]

---

[6] Among cases litigated in this Court by petitioner or an Area Committee or both in conjunction are *Harisiades* v. *Shaughnessy*, 342 U.S. 580; *Carlson* v. *Landon*, 342 U.S. 524; *United States* v. *Spector*, 343 U.S. 169; *Chew* v. *Colding*, 344 U.S. 590; *Heikkila* v. *Barber*, 345 U.S. 229; *Barber* v. *Gonzales*, 347 U.S. 637; *Hyun* v. *Landon*, 350 U.S. 990; *Jay* v. *Boyd*, 351 U.S. 345; *United States* v. *Witkovich*, 353 U.S. 194; *Barton* v. *Sentner*, 355 U.S. 2; *Rowoldt* v. *Perfetto*, 355 U.S. 115; *Heikkinen* v. *United States*, 355 U.S. 273; *Nowak* v. *United States*, 356 U.S. 660; *Maisenberg* v. *United States*, 356 U.S. 670; *Bonetti* v. *Rogers*, 356 U.S. 691; *Niukkanen* v. *McAlexander*, 362 U.S. 390; *Kimm* v. *Rosenberg*, 363 U.S. 405; *Flemming* v. *Nestor*, 363 U.S. 603; *Chaunt* v. *United States*, 364 U.S. 350; *Gastelum-Quinones* v. *Kennedy*, 374 U.S. 469.

All defense work is done at the expense of petitioner and without cost to the individual being assisted. No conditions of any kind are imposed on the assistance, nor is the alien or his family ever questioned about his political views or affiliations or subjected to indoctrination. (Tr. 4571-72, 4581-83, 5488-90.)

From its inception, petitioner defended deportation cases involving charges that the alien was or had been a member of the Communist Party (Tr. 5446, 5466-68, 4801). The first of petitioner's cases that Abner Green heard about, in 1935, was petitioner's defense of a Jewish refugee whom the Immigration Service was seeking to deport to Nazi Germany and sure death, on a charge that he had been a Communist in Germany (Tr. 4805-06). As the Board (R. 65) and the court below (R. 101) found, petitioner also has defended numerous non-Communists in deportation cases not involving charges of Communism or other political grounds. Abner Green, the one person in a position to know, testified that over a twenty year period petitioner defended 3,000 to 4,000 deportation cases, of which about 350 to 400 involved charges of past or present Communist Party membership or affiliation (Tr. 6112-13, 6122). The Board estimated, without citing any evidentiary basis, that the latter type of cases were "at least in excess of fifty percent" (R. 66).

Prior to 1946, deportation cases charging past or present Communist Party membership were few and occasional (Tr. 5396-97). But beginning in 1946, with the onset of the cold war, the Department of Justice instituted such cases in large quantity, most alleging Party membership of short duration in the '30's (Tr. 5397-99, 5454-55, 5969, 6116). The Department's drive was not restricted to security risks. It extended to aliens proceeded against on flimsy evidence; to aliens long resident in the United States whose Party membership, if any, had been nominal and many years past; to aliens whose expulsion would de-

stroy long-established American families. It was marked by highly questionable and oppressive procedures. (E.g., P. Ex. 17, 23, 47, 51, 166; R. Ex. 191, 173; Tr. 5412-27. See also *Rowoldt* v. *Perfetto*, 355 U.S. 115; the description of the aliens involved in *Harisiades* v. *Shaughnessy*, 342 U.S. 580, 581-83; *Galvan* v. *Press*, 347 U.S. 522; *Carlson* v. *Landon*, 342 U.S. 524; *Jay* v. *Boyd*, 351 U.S. 345.)

The aliens and their families facing the Department's political deportation drive were generally poor, and in the prevailing climate the nature of the charge increased their difficulty in obtaining help. It was natural for them to come to petitioner, which was expert in the deportation field and publicly committed to helping any alien who sought its help, or to the Area Committees which operated on like principles. For example, when Charlie Soldo, a retired West Virginia coal miner, was arrested on a political deportation charge, his regular lawyer refused to represent him out of fear that it would hurt his (the lawyer's) reputation. It was then that the desperate Soldo family got help from the Western Pennsylvania Committee for Protection, which provided Soldo a lawyer without cost to him. The case was eventually won before the Board of Immigration Appeals because of the insufficiency of the evidence. (Tr. 6295-96, 6299-6300) 6311.)

Petitioner finances its activities by appeals to the public for funds and by sales of its literature (Tr. 4252-53, 6230-32). Its financial records are audited annually, and the audit summary is published each year in petitioner's periodical, *The Lamp* (Tr. 4141-42, 6233; R. Ex. 241, p. 4).

Prior to the cold war, petitioner's relations with the government, including the Department of Justice, were often amicable. Petitioner and the Immigration Service cooperated in projects of common interest (Tr. 5379-92; R. Ex. 212, 238, 239; R. 70). High government officials, including the Commissioner of Immigration and Naturalization, spoke at petitioner's Conferences and other affairs (R. 70;

R. Ex. 187, pp. 3-4; Tr. 5663-64, 5672, 5316-18, 5332, 5372; P. Ex. 165, 258, p. 20; R. Ex. 133, 135, 156, 170). The Department of Justice supplied to petitioner without charge radio time for a broadcast (R. 70; Tr. 5621-25), and the Office of War Information broadcast a program by petitioner (R. 70; Tr. 6227-29; R. Ex. 240). President Roosevelt, General Eisenhower, Attorneys General, other cabinet officers, Senators and Representatives sent messages to petitioner's affairs (R. Ex. 135, 38, 39, 133, 160, 162, 169, 167, 168; P. Ex. 165, 259, 160, 162, 163; R. 70; Tr. 5315, 5336, 5340, 5675-76).

These governmental manifestations of friendliness abounded in the proceedings of petitioner's 1945 Annual Conference (P. Ex. 259). The Annual Conference was not held in 1946 (Tr. 5387).

The next Annual Conference convened in October 1947 (P. Ex. 245). Petitioner's policies and positions were identical with what they had been before (Tr. 5400). Abner Green was still Executive Secretary. But the cold war was under way, and the anti-Communist deportation drive was in full swing. No government officials spoke or sent messages (P. Ex. 245). A year or two later, the Attorney General included petitioner on his so-called list of subversive organizations, without the formality of a hearing (Tr. 5082-83, 5086-88, 6901-02)[7]

The Proceeding

On April 22, 1953, the Attorney General instituted this proceeding by filing a petition with the Board for an order requiring petitioner to register as a Communist-front organization under section 7(b) of the Act (Tr. 7510). On

[7] But eminent private individuals thereafter continued participation in petitioner's affairs or projects including Thomas Mann (Tr. 5470-71, 5507; R. Ex. 152), Bishop Arthur W. Moulton (Tr. 7001 ff.), Prof. Anton J. Carlson (Tr. 4388 ff.), Prof. Louise Pettibone Smith (Tr. 3961 ff.), and many others (Tr. 5595-96).

August 28, 1953, the Attorney General filed an amended petition (R. 3). On June 27, 1960, the Board issued a registration order against petitioner (R. 78) and a Report (R. 22-77) containing its findings and conclusions. On August 25, 1960, petitioner filed a petition for review in the court below under section 14(a) of the Act (R. 18). On January 8, 1962, the court remanded the case to the Board for the purpose of allowing petitioner to introduce additional evidence that the testimony of the Attorney General's witness Hartle was false (R. 80-81). On March 8, 1962, the Board issued a "Report of the Board on Reconsideration" (R. 80-92), in which it held that Hartle's original testimony was credible and recommended affirmance of its order of June 27, 1960 (R. 92).[8]

At the administrative hearing, most of the testimony introduced by the Attorney General related to some of the Area Committees and their supposed connections with the Communist Party. Petitioner did not seek to refute this testimony. Instead, it introduced evidence that the Area Committees were independent organizations and contended that it could not be held liable for their actions. (R. 29; *supra*, pp. 6-7). The Board found that petitioner and the Area Committees constitute a single organization for the purposes of the Act (R. 35). It then, throughout its Report, relied on evidence concerning the Area Committees. Thus the Report's Concluding Findings (R. 72-74) summarize as findings relating to petitioner evidentiary findings relating to both petitioner and Area Committees.

The most damaging findings relating to petitioner itself were based on testimony of the Attorney General's witness Lautner. This testimony and the findings are later described, as is the curtailing of Lautner's cross-examination (*infra*, pp. 26-29).

---

[8] Subsequent references herein to the Board's Report are to the original Report. For present purposes, the Report on Reconsideration is of no significance.

The Board concluded that petitioner met the definition of a Communist-front organization on the ground that it "has been and is (i) substantially directed, dominated, or controlled by the Communist Party of the United States, a Communist-action organization as defined in section 3(3) of the Act, and (ii) primarily operated for the purpose of giving aid and support to such Communist-action organization" (R. 74). At the administrative hearing, no evidence had been introduced to establish that the Communist Party was a Communist-action organization. The Board held that petitioner was bound in this respect by the Board's determination of April 20, 1953, made in the proceeding against the Party, to which petitioner was not a party (R. 24).

The court below affirmed the order of the Board, per Judges Prettyman and Danaher, with Chief Judge Bazelon dissenting (R. 93-115). The majority sustained the finding that the Party controlled petitioner on the basis of, among other things, the findings derived from the testimony of Lautner and the evidence concerning the Area Committees (*infra*, pp. 26-30). We later examine in some detail the principal bases of the court's conclusion on the control component in support of our contentions that the court did not grant an adequate and fair review, that it and the Board relied on irrelevant matters and incompetent evidence, and that it was error to rely on Lautner's testimony in view of the curtailment of his cross-examination (*infra*, pp. 26-34).

The court sustained the second half of the Board's conclusion—that petitioner is primarily operated for the purpose of giving aid and support to the Communist Party—on the ground that petitioner aided the Party by "contesting," through legal proceedings and otherwise, "the deportation of aliens and promoting their naturalization" (R. 101). The court's theory was that insofar as petitioner defended alien members of the Communist Party it thereby served the "direct aims and purposes of the Communist Party," and that insofar as petitioner defended non-Communists it aided the Party by improving the Party's public

relations (R. 101-03; see *infra*, pp. 18-20 for a fuller discussion). Neither the court nor the Board found that petitioner had advocated or otherwise sought to forward the violent overthrow of the government or other illicit objectives attributed to the Communist Party, that petitioner had recruited for the Party, given it financial aid, or attempted to promote Communist ideology. To the contrary, the court recognized that petitioner is "an organization which vigorously devotes itself to the protection of the rights of all and any foreign-born who seeks its help," an end which the court considered "a laudable objective" (R. 102).

Chief Judge Bazelon, dissenting, did not reach the finding on control (R. 109). He took the position that the Act, construed in accordance with the Congressional intent and so as to avoid "serious constitutional questions," did not reach organizations with "innocent objectives and innocent activities." By his construction, the aid component of the section 3(4) definition of a Communist-front organization is "limited to the purpose of aiding a Communist-action organization to advance the objectives of the world Communist movement." (R. 109-12.)

REASONS FOR ALLOWING THE WRIT

This case brings to the Court for the first time the provisions of the Subversive Activities Control Act requiring the registration of organizations found by the Board to be Communist-front organizations. Professor Chafee has said of these provisions:

> "Inasmuch as this part of the McCarran Act is likely to reach many groups whose purposes are cultural as well as political and who are engaged in exchanging ideas rather than winning elections, the interference with the lives of private citizens is much more extensive than in the case of the 'Communist-action' provisions." Chafee, *The Blessings of Liberty* (1956) 148.

The issues raised by this case go to the heart of this legislation—what it means, whether it is constitutional, and what is the role of judicial review of Board decisions. The resolution of these issues is of crucial importance to the constitutional right of association, to the administration and application of the Act, and to the reputation of American justice.

A. Consequences of the decision below

If the decision below stands, the immediate practical effect will be to destroy petitioner. A final registration order, together with the attendant sanctions on the organization and its members (*supra*, pp. 4-5), is obviously a death sentence for any cause organization. The organization cannot hope to retain its members and contributors, to win public support, to find an audience for its views, or even to hire a hall.

The registration death sentence here has been decreed for an organization which has for thirty years rendered unexcelled services in defending the foreign born from the rigors and inhumanities which characterize our immigration laws and their administration. Not the least of these services has been the able defense of aliens who could find no other defender because of the political nature of the deportation charges against them. (*Supra*, pp. 7-10.)

Yet petitioner was condemned not in spite of its contributions to society, but precisely because of them. For it was petitioner's defense of the foreign born, particularly in legal proceedings, which was held to satisfy the Act's requirement that Communist-front organizations be primarily operated for the purpose of giving aid and support to the Communist Party. At the administrative hearing, counsel for the Attorney General stated (Tr. 4720-21):

> "What we have attempted to do is simply to show that the American Committee defends these foreign people who are charged with present or past membership in

> the Communist Party, and as a means of doing it that they engaged counsel and in some cases paid counsel themselves for representing these foreign born people so charged."

The Board and the court below went further. They doomed petitioner not only for defending aliens accused of Communist Party membership, but also for defending aliens against whom there was no charge or suspicion of Communism—the incredible theory being that petitioner is a security risk rendering service to the Communist Party by doing good turns for non-Communists (see *infra*, pp. 18-20). Others will consider it a discredit to our system of justice that petitioner is being persecuted for defending persons in legal proceedings, particularly when the persecution is instigated and led by the governmental department which is petitioner's adversary in those proceedings.

By destroying petitioner, the decision below will deprive the entire foreign-born community of its most principled and skilled defender. And considering petitioner's fate, no other organization will be so foolhardy as to replace it in that role. Thus one ignoble result of this case will be to facilitate the prosecution of deportation and denaturalization cases by making it difficult or impossible for the accused to obtain counsel and other assistance.[9]

If the decision below stands, it will adversely affect all cause organizations, no matter what their field of operation. The decision authorizes the government to lay a heavy hand on such groups and their members for doing nothing more than promoting by lawful means objectives

---

[9] Professor Chafee has observed (*op. cit.* 134): "The American Committee for Protection of Foreign Born has supplied competent lawyers to many aliens arrested on deportation charges, who might otherwise have been defenseless and who had ever so much to lose from mistaken decisions. Whatever objections can be made to some of the activities or backers of enterprises like these, it is plain that if the government pulls up the tares, it will pull up a good deal of wheat too."

which are considered commendable by many or most of the American people. So all petitioner did was to work by peaceable methods for an objective described by the court below as "laudable"—"the protection of the rights of all and any foreign-born who seek its help" (R. 102). By the same token, as Chief Judge Bazelon pointed out in his dissent, the Act can be used against any organization with "innocent objectives and innocent activities," including "promoting public school integration" (R. 109-10). The court below, bemused by a kind of Madison Avenue theory that the Communist movement must be deterred from improving its public image "by operating behind a facade of good deeds" (R. 103), has made the doing of good deeds a dangerous affair.

Nor will organizations derive much, if any, protection from the fact that the Act in terms applies only to organizations, even if they do good deeds, which are "substantially controlled" by the Communist Party. The loose, politicized standards employed by the Court in determining the control component (*infra*, pp. 26-34) plus the Board's compulsion to credit unreliable, paid informers (*infra*, pp. 26-29), always in inexhaustible supply, make it child's play to "prove" such control whenever the government has a mind to do so. Thus the decision below enables the Act to be utilized, like South Africa's Suppression of Communism Law[10] and like various state enactments,[11] as an

---

[10] Under that law, Alan Paton has observed, "If you are not 100 per cent in favor of apartheid, then you are counted as 'assisting the spread of communism.'" Wash. Eve. Star, Sept. 14, 1962.

[11] "This Court knows from other litigation . . . that the Louisiana legislature regards the movement to increase Negro voting in the State as part of the Communist conspiracy. *All* of the organizations promoting Negro registration therefore fall within the definition of "communist party," and any member could be prosecuted under the Louisiana Anti-Subversion Law." Wisdom, J., dissenting, *Dombrowski* v. *Pfister* (E. D. La., 3-jdg. ct., 1964), not yet reported, emphasis in original.

instrument of oppression spuriously claimed to be a weapon against Communism.

Indeed, if the Act means what the majority held, it hardly needs to be formally employed to inhibit the right of association. Who can feel safe in joining an organization, no matter how sure he is that all of its actions are "laudable," if the organization can be found, as here, to be a Communist-front on the grounds that some of its leaders surreptitiously entertained pro-Communist motivations? Moreover, the decision below insures that all organizations doing good deeds will be subjected to federal surveillance for the detection of such hidden motivations.

B. The meaning of the aid component of section 3(4)

The foundation for these untoward results was laid by the court's construction of the aid component of section 3(4) of the Act. That section defines a Communist-front organization by two characteristics. The organization (1) must be "substantially directed, dominated or controlled by a Communist-action organization" (i.e., the Communist Party), and (2) must be "primarily[12] operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement." We call the first of these characteristics the control component, the second the aid component. The court's construction of the aid component raises a major question as to the meaning of the Act.

In applying the aid component, the court below found (R. 101) that petitioner "undoubtedly devoted the major portion of its efforts to contesting the deportation of aliens and promoting their naturalization. It furnished counsel and material in court cases in that area, issued statements, made pleas, and in every possible way battled in this behalf." This activity, the court held, aided and sup-

[12] The court below stated (R. 101) that "'primarily' does not necessarily mean principally; it may mean merely substantially."

ported the Communist Party in two ways. First, insofar as petitioner defended aliens who were members of the Communist Party, it thereby aided the Party itself, for "Obviously the naturalization of its members and the prevention of their deportation were direct aims and purposes of the Communist Party" (R. 101).

The second way in which petitioner aided the Communist Party, according to the court, was petitioner's defense of non-Communists. The court explained (R. 103):

> "... it is indubitably clear that any laudable, praiseworthy activity which is identified in the public mind with the Communist Party or with Communism, or is so identified in the minds of those being aided by the effort, or is identified as being within the community of policies advocated by the Party, is a benefit to and naturally an objective of the Party. The identification of itself with laudable causes would, of course, be a benefit to the Party, as it is to any organization. The identity of its prominent members with such causes is also a worthwhile project for an organization seeking power among the public. More subtle and less effective, but perhaps the only route to public acceptance available to a clandestine operator is to create a picture of a community of interest between its own causes and interests which bear public acclaim. This is indeed a subtle business, but if effectuated it would be a real and substantial aid and support to the Party. This is one of the theses of the statute. The Congress declared that the Communist movement attracts strength to itself by operating behind a facade of good deeds."[18]

[18] The court never explained how the Communist Party is "identified in the public mind" with the beneficent activities of an organization which, like petitioner, has always stoutly maintained that it is controlled by nobody other than itself and promotes no policies except its own. Indeed, it is only the Board's order and the court's opinion which has improved the public relations of the Party by giving it credit for petitioner's "good deeds." The fact is that the court's theory is fundamentally inconsistent with sec. 2(7) of the Act, which recites that Communist-front organizations conceal the facts as to their true character and are thereby able to obtain a public support they would not otherwise get.

Neither the Board nor the court found, nor would the evidence have permitted them to find, that petitioner aided the Communist Party in any other way. There was no finding and no evidence that petitioner recruited members for the Communist Party, disseminated Communist ideology, or promoted such alleged Communist objectives as overthrowing the government by force and violence.

We share Chief Judge Bazelon's view that the aid component is not satisfied, as the majority held, by innocent activities directed toward innocent objectives even if the Communist Party also advocates the same objectives. Properly construed, the aid component refers to aid to the Communist Party in achieving the sinister objectives described in section 2 of the Act. At the most it can be expanded only to include direct aid to the Party itself in its organizational operations, such as recruiting members or giving it financial support. It does not include, as the majority held, such attenuated and speculative indirect benefits as improving the public "image" of the Party (R. 101) by promoting "laudable causes" (R. 103). Nor does it include assistance to individual Party members in their personal problems (and still less aid to non-Communists) merely because the Party as an organization may reap an indirect benefit therefrom. Defending from deportation an individual who is, or is accused of being or having been, a Communist is not aid to the Communist Party for the purposes of the Act, any more than is medical treatment of such an individual when he is ill.

Our view would ameliorate the constitutional problems of the Act (*infra*, pp. 22-24) and would avoid the grotesque and unseemly results of the decision below, which has converted an enactment supposedly designed to cope with dangers to the internal security into a deterrence to the doing of good deeds.

Our view also harmonizes section 3(4) with other provisions of the Act. First, as Chief Judge Bazelon pointed out

(R. 110), the severity of the penalties levied by the Act on members of Communist-front organizations, most of whom will not be Communists,[14] "shows that Congress had no intention of inflicting them on otherwise innocent people merely because of membership in otherwise innocent organizations that the Communist Party uses to advance an innocent aim."

That the Communist-front provisions of the Act are not aimed at innocent activities also appears from sections 2(7) and 13(f)(3) of the Act. Section 2(7) recites, as the justification for the Communist-front provisions, that Communist Parties operate through Communist-front organizations "in carrying on the activities referred to in paragraph" 2(6). The activities described in 2(6) are conspiratorial efforts to seize government power and set up foreign-controlled Communist totalitarian dictatorships. Nothing could be further from this kind of thing than the legal defense of deportation cases or the doing of other good deeds.

Again, section 13(f)(3) requires the Board, in determining whether an organization is a Communist-front, to consider "the extent to which its funds, resources or personnel are used to further the objectives of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2." The only objectives referred to in section 2 are the sinister ones mentioned. See *Communist Party* v. *S.A.C.B.*, 367 U.S. 1, 55-56.

Finally, as Chief Judge Bazelon also pointed out, (R. 113) the majority's construction eliminates the aid component of section 3(4). According to the majority, any

---

[14] Judge Prettyman, the author of the majority opinion below, has elsewhere recognized that "almost by definition, many members of a Communist front are unsympathetic to Communist aims or Communist philosophy." *National Council of American-Soviet Friendship* v. *S.A.C.B.*, 322 F. 2d 375, 379.

organization satisfies the aid component if it does anything which the Communist Party considers to be to its advantage. Since the Party would obviously not control any other kind of organization, the two components of the definition section are reduced to one—the presence of Party control.

C. Constitutional questions

1. Vagueness

By the construction of the majority below, the aid component of section 3(4) includes any activity that may benefit the Communist Party, no matter how collaterally or intangibly. This makes the definition of a Communist-front organization so vague and comprehensive as to violate due process.

Cramp v. *Board of Public Instruction*, 368 U.S. 278, in holding an oath requirement invalid for vagueness, stated (at 286):

> "Those who take this oath must swear, rather, that they have not in the unending past ever knowingly lent their 'aid,' or 'support,' or 'advice,' or 'counsel' or 'influence' to the Communist Party. What do these phrases mean? . . . Could a lawyer who had ever represented the Communist Party or its members swear with either confidence or honesty that he had never knowingly lent his 'counsel' to the Party? Could a journalist who had ever defended the constitutional rights of the Communist Party conscientiously take an oath that he had never lent the Party his 'support'? Indeed, could anyone honestly subscribe to this oath who had ever supported any cause with contemporaneous knowledge that the Communist Party also supported it?
>
> "The very absurdity of these possibilities brings into focus the extraordinary ambiguity of the statutory language."

The "possibilities" mentioned in this passage are of the same genre as, and have no greater absurdity than, the actuality here—that legal defense of the foreign born has

been held to constitute "aid and support" to the Communist Party. Accordingly, section 3(4), as here construed, has the "extraordinary ambiguity" which *Cramp* condemns.

2. The First Amendment

Communist Party v. *S.A.C.B.*, 367 U.S. 1, held that the provisions of the Act requiring the registration of Communist-action organizations did not offend the First Amendment. The Court recognized that the provisions interfered with the rights of association of members of the Communist Party, the organization there involved. However, it found that these interests were outbalanced by the government's interest in what was considered to be a reasonable accommodation of "the exigencies of self-preservation and the values of liberty" (at 96), designed to protect the national security against what Congress could reasonably consider a dangerous, foreign-controlled conspiracy, seeking by illicit means to overthrow the government and substitute a totalitarian dictatorship under foreign domination (at 93-95). The Court expressly disclaimed, however, any possibility that the Act's registration requirements could constitutionally be applied to organizations which do not have such endangering characteristics (at 104).

This case obviously comes within the disclaimer. The First Amendment protects the right of persons to associate in petitioner. Cf. *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449; *Communist Party* v. *S.A.C.B.*, *supra*, at 90-91. It also protects petitioner's right to agitate in favor of the interests of the foreign-born, as well as its right to sponsor litigation defending those interests. Cf. *N.A.A.C.P.* v. *Button*, 371 U.S. 415, 428-30. These were the only activities of petitioner which induced the registration order against it. It cannot rationally be found, nor was it found, that these activities, regarded by the court below as "laudable," endanger the security of the nation or are inconsistent with the maintenance of a free, democratic society. On the con-

trary, petitioner's activities promote principles of humanity and the interests of justice. Thus there is no "evil" to balance against the Act's interference with the liberties of petitioner, of those who participate in its work, and of those whom it defends.

The Board made a finding, which the court below affirmed, that petitioner is substantially controlled by the Communist Party. Even if there were grounds for this canard (see *infra*, pp. 26-34), it would not matter. There can be no rule that Communists must be prevented from engaging in "laudable" activities, or that they may not defend themselves and others in legal proceedings. And how can a "laudable" activity be dangerous because it is performed by or at the direction of Communists? As Judge Bazelon stated (R. 111), citing *DeJonge* v. *Oregon*, 299 U.S. 353, and *Scales* v. *United States*, 367 U.S. 203, "Activities protected by the first amendment cannot be restrained because of association with an organization some of whose activities are not so protected.' Because the Communist-front provisions of the Act, particularly as construed by the majority below, restrain innocent activities along with (and even more than) dangerous ones, they violate the established principle that, "Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." *N.A.A.C.P.* v. *Button*, 371 U.S. 415, 433. See also *Shelton* v. *Tucker*, 364 U.S. 479, 488-89; *Talley* v. *California*, 362 U.S. 60.

3. Preclusion

Petitioner was found to be a Communist-front organization on the ground that it was controlled by, and was primarily operated for the purpose of aiding and supporting, the Communist Party. This finding corresponds to the section 3(4) definition of a Communist-front only if the

Communist Party was a Communist-action organization at the time of the finding against petitioner.

No evidence was introduced at petitioner's hearing to establish that the Communist Party was a Communist-action organization. Instead, the Board held that petitioner was bound by the Board's determination, made in a prior proceeding against the Communist Party, that the latter organization was an action organization (R. 24)

This preclusion of petitioner by a finding made in a proceeding to which it was not a party violates the due process principle that a deprivation of liberty may not be accomplished without affording an opportunity to contest the factual premises on which the validity of the deprivation depends. *Noto* v. *United States*, 367 U.S. 290, 299; *Renaud* v. *Abbott*, 116 U.S. 277, 288. Cf. *Kirby* v. *United States*, 174 U.S. 47.

Moreover, the finding as to the Communist Party related to April 20, 1953, the date of the order against the Party. Yet it precluded petitioner as to the nature of the Party on June 27, 1960, the date of the Board's order against petitioner. Thereby the due process error was compounded. *United States* v. *Carolene Products Co.*, 304 U.S. 144, 153; *Chastleton Corp.* v. *Sinclair*, 264 U.S. 543; *Baker* v. *Carr*, 369 U.S. 186, 214.

Accordingly, this case presents to the Court for the first time the substantial questions of whether the Act, correctly construed, authorizes such preclusion and, if so, whether the preclusion is constitutional.[15]

---

[15] In the *Communist Party* case, *supra*, a bare majority held that it was premature to consider whether the registration provisions of the Act violate the privilege against self-incrimination. We ask the Court to reconsider that holding and to hold the Act invalid for the reasons stated in the dissenting opinions of Justices Douglas and Brennan.

D. Questions arising from the application of the control component

We believe that the Board's conclusory finding that petitioner was controlled by the Communist Party was derived from an unfair and hostile evaluation of the record and from irrelevant and incompetent evidence. We also believe that the court below did not fulfill its responsibility to accord petitioner a fair and adequate judicial review of the Board's findings on this subject. We ask the Court to review these issues in the interests of the fair administration of justice and in order to protect the right of association in petitioner and in other organizations which will receive similar mistreatment if the decision below is not corrected.

In order to keep within limits suitable to a petition, we will confine our demonstration to those matters on which the opinion appears to rely most heavily for sustaining the Board's control finding. Our discussion will also develop other substantial questions connected with the control component and presented by this case.

1. Lautner and the Curtailment of Cross-Examination

The opinion refers (R. 98-99) to testimony of the Attorney General's witness John Lautner, credited by the Board over the flat contradiction of Abner Green, that Green was picked to head petitioner by a decision of Lautner and one, Landy, acting for the Communist Party. This testimony was the basis for the Board's finding, of major importance to its conclusion on the control component, that Green was a "representative of the Communist Party in operating" petitioner (R. 39). The court, however, neither mentioned nor decided the two principal issues raised by petitioner in arguing that the Board erred in relying on Lautner's testimony.

(a) Lautner testified that he and Landy made their decision in 1942 (Tr. 991-95, 1095).[16] The Act requires the Board to determine the *present* character of an accused organization (see sec. 13(h) and (i)). Clearly, the fact, if it be one, that the Communist Party picked Green in 1942 to be petitioner's chief executive does not tend to prove that Green was a "representative" of the Party in June 1960.

The court below, however, not only did not discuss this issue, but failed even to mention the date of the alleged selection.

(b) On cross-examination, counsel for petitioner asked Lautner, "Where do you live?" Lautner refused to answer; the hearing examiner refused to order him to answer; the question went unanswered; and the Board refused to strike his testimony. (R. 36; Tr. 1083-87.) This was a clear denial of the right of cross-examination and constitutes reversible error. *Alford* v. *United States*, 282 U.S. 687, squarely so holds as to the exclusion of the identical question. Indeed, this case is more aggravated. For though Lautner claimed that he feared for his physical safety if he disclosed his residence, the examiner excluded questioning designed to expose his claim as insincere and preposterous (Tr. 1083-84, 1087-93). Nevertheless, the opinion below does not mention the curtailment of Lautner's cross-examination.

Lautner was a former Communist who, at the time of the hearing and for some years before, derived his income solely from his employment by the Department of Justice as a witness and "consultant" on Communism (Tr. 1795-

[16] Lautner's account was that Green was picked to succeed Novick (Tr. 991-95). Green's testimony that Lautner's story was "completely false" (Tr. 4845-46) was corroborated by unimpeachable, documentary evidence that Green was elected Executive Secretary, the top staff officer of petitioner, by petitioner's then Board of Directors in *December 1941*, succeeding not Novick, but Curt Swinburne (R. Ex. 127, 126; Tr. 4819, 4823-24; R. 38).

96, 1801-06). He had an unsavory personal history (Tr. 1824-31), which included, as he admitted, the giving of perjured testimony in a civil suit (Tr. 1827-28). The Board should not be permitted to protect such professional witnesses from cross-examination which must be permitted of all other witnesses. At the least, it would have been more seemly if the court below had distinguished *Alford*, if it thought that a distinction existed.

The curtailment of Lautner's cross-examination in itself raises a question which this Court should review. (See No. 6 of our Questions Presented.)

2. Other Lautner Testimony

The court's opinion states (R. 99), "There was direct and specific evidence that Green and Barron attended Party meetings, were advised of Party policies, and carried out these policies in the work of the Committee." The statement is a reproduction of a finding by the Board which, as its Report states, was based exclusively on testimony of Lautner (R. 48).[17] Our preceding comments therefore apply. In addition, it is revealing to quote the testimony from which the finding derived (Tr. 1004-05):

> "Q. Do you know whether or not the American Committee for the Protection of Foreign Born during the time you were a member of the Party [1929-1950—R. 75] had any connection whatsoever with the Party, speaking of the Communist Party?
>
> • • • •
>
> The Witness: Yes.
>
> • • • •

[17] The Board's assertion that this testimony was "without contradiction or denial" (R. 48) is proven wrong by the Board's own later statement (R. 64): "Green further testified that the national conferences have been the only body of the American Committee that have ever set the policies of the organization; that the conferences elected the officers; and that the policies and decisions of the national conferences have been binding on the officers of the American Committee."

Q. What connection, if any, did it have?

• • • •

The Witness: The functionaries of the Protection of the Foreign Born, the top functionaries, like Abner Green and Harriet Baron, attended Party meetings and had the benefit of the discussions and deliberations of the Party on all policies, and carried out Party policies with respect to their own organization, and fitted Party policies into the functions of their own organizations."

It is almost needless to say that Lautner did not testify as to what was said or occurred at the meetings or what were the Party policies involved. Moreover, Lautner was thoroughly unqualified to give testimony to support the finding of the Board and the court that Party policies were "carried out in the work of the Committee." For, as Lautner acknowledged on cross-examination, he never attended any of petitioner's meetings or affairs and was not acquainted with its work (Tr. 1109-10, 1138-43). It was error for the Board and the court to rely on such obviously incompetent and conclusory evidence, particularly when it came from a hostile informer in the pay of petitioner's adversary in the litigation. It was inexcusable for the court to characterize this testimony as "direct and specific evidence."

3. Area Committees

The bulk of the Board's evidentiary findings on the control component were made with respect to the Area Committees. Petitioner did not seek to rebut the testimony from which these findings derived. Instead, its position was that the Area Committees were separate and independent organizations[18] with whom it cooperated; that they elected their own officers and conducted their own activities as they saw fit; that petitioner did not control

[18] The court below misstated petitioner's position as a claim that "these local groups were autonomous" (R. 100).

them; and that petitioner was not, and could not be held, accountable for their actions and personnel. The Board, however, held that petitioner and the Area Committees constituted a single organization. (*Supra*, pp. 6-7, 12.)

This holding raised factual and legal issues which we need not explore here but which were fully briefed in the court below. It was the obligation of the court to review those issues. Instead of doing so, however, it stated that it considered it "unimportant" whether the Area Committees were parts of petitioner because "they were intermeshed with the national group, not only in policies but in operation" (R. 100).

In affirming the result reached by the Board on a theory never advanced by the Board, the court violated an elementary principle of judicial review. The court was required to reivew the findings and theories of the Board. It was not permitted to affirm the Board's order on a theory of the court's own creation. *S.E.C.* v. *Chenery Corp.*, 318 U. S. 80; 332 U.S. 194.

In any event, the court's holding raises a substantial question important to the scope and administration of the Act. We think that the Act does not authorize, nor does the Constitution permit, imposing liability on an organization for the conduct of other organizations with which it is "intermeshed"—whatever that means—but which it does not control. See No. 7 of our Questions Presented.

4. The "Thread of Communist Interest"

The opinion below asserts (R. 105) that "a prominent thread of Communist interest" ran through petitioner's activities. It then cites several matters to support the assertion.

(a) First the court states that petitioner "took vigorous positions in respect to the Gerhardt Eisler affair," although "this was not a naturalization or deportation matter," but rather a controversy concerning Eisler's "membership in

the Communist Party and his refusal to testify before the House Committee" (R. 165).

The uncontradicted evidence, however, is that petitioner represented Eisler only in his deportation case and in litigation seeking to obtain his release on bail to insure his appearance in that case, and that it also campaigned to "let Eisler go home" in view of the fact that Eisler at all times wanted to depart for Germany and was prevented only by being held for the deportation proceeding. (Tr. 5429, 5432, 5436-42; P. Ex. 200; 244, p. 2; 194, p. 3; see *United States ex rel. Doyle et al* v. *District Director*, 169 F. 2d 753.). Petitioner did *not* defend Eisler in his other legal troubles, which were not connected with his deportation case (Tr. 5433-37). Petitioner's only participation in Eisler's contempt case was the filing of an amicus brief in this Court limited to a question of interest to the foreign born—whether Eisler, as an interned enemy alien, was entitled to the rights of a prisoner of war and therefore was immune from coercive interrogation under Article 5 of the Geneva Convention on Prisoners of War. (A.G. Ex. 202, p. 2; see petitioner's amicus brief in *Eisler* v. *United States*, certiorari granted, 335 U.S. 857; removed from docket, 338 U.S. 189; writ dismissed, 338 U.S. 883.)

The court's erroneous description of the evidence as to Eisler is aggravated by its ignoring of what the Board held was an important instance of action by petitioner outside of its ostensible purposes. The Board found that petitioner "went beyond the normal defense of the foreign born by supporting Communist Party functionaries Fred Estes and James Green, both of the State of Texas," following their refusal to give evidence in deportation proceedings as to whether accused aliens were members of the Communist Party (R. 50).

The sole evidence on which the finding was based, and the only reference in the record to Estes and Green, was a news item in the January 1950 issue of petitioner's publica-

tion, *The Lamp* (P. Ex. 210, p. 2), reporting their contempt convictions.

The finding based on the news item is so preposterous as to illustrate the Board's bias.[19] The court's failure to notice the Board's unpermissible reliance on this kind of finding constituted as much a failing of its obligation of judicial review as its inaccurate statement of the evidence regarding Eisler.

(b) The court cited the following as another example of the "prominent thread of Communist interest" (R. 105):

> "The provisions of the Internal Security Act[20] which were the targets of the Committee's attacks were those which required the deportation of aliens who were or had been members of the Communist Party. The Committee maintained that these provisions were premised on political opinion and threatened the freedom of all American people to their political opinions. This, of course, is Communist doctrine, but so far as this Government is concerned the point was put at rest by the Congressional findings to which we have referred."

In like vein, the court also cited, presumably as more "Communist doctrine," petitioner's statement that three decisions of this Court "destroyed many of the democratic

---

[19] The real "support" for Estes was given by the Fifth Circuit, which, as the Board's Report fails to note, reversed his contempt conviction. *Estes* v. *Potter*, 183 F. 2d 865. We have not found a report of Green's case, which, we surmise, abided the result of the *Estes* case.

[20] The opinion's reference to the Internal Security Act, the deportation provisions of which were superseded by the Immigration and Nationality Act, seemingly stems from the court's erroneous belief that petitioner's "name for the Internal Security Act of 1950" is "the Walter-McCarran Act" (R. 104-05). In fact, petitioner, like others interested in the immigration field, applied the name "Walter-McCarran Act" to the Immigration and Nationality Act. The court apparently was misled by the fact that the Internal Security Act is often called the "McCarran Act."

rights accorded non-citizens and jeopardized, thereby, the liberties of all Americans, native as well as foreign born," and were cases in which "the U. S. Supreme Court had deserted its duty to protect the Bill of Rights" (R. 106).[21]

It seems to us that these passages of the court's opinion show that the court's review of the Board's decision was affected by an irrational conception of "Communist doctrine."

(c) The last bits of the "thread of Communist interest" combine a similar approach with erroneous statements of fact.

The court stated (R. 106): "The Internal Security Act is directed also at Fascists and all sorts of totalitarians. But we do not find in this record evidence that the Committee fought in behalf of Fascist aliens."

As the court itself recognized (R. 101, 102), petitioner defended all persons who sought its help in deportation or denaturalization cases regardless of their political views (*supra*, p. 8). To the best of our knowledge and belief, the government has never sought to deport an alien on a charge that he was a fascist. During World War II, there was a brief flurry of denaturalization actions instituted against members of the German-American Bund and other Nazi or fascist sympathizers. The record does not show that any of these sought petitioner's help. Petitioner did

---

[21] The three cases criticized (see P. Ex. 216) were *Carlson* v. *Landon*, 342 U.S. 524 (Justices Black, Frankfurter, Douglas, Burton dissenting); *Harisiades* v. *Shaughnessy*, 342 U.S. 580 (Justices Black and Douglas dissenting); *United States* v. *Spector*, 343 U.S. 169 (Justices Frankfurter and Jackson dissenting). In *Carlson*, Justice Black (at 548) described the majority holding as "a shocking disregard of . . . provisions of the Bill of Rights." In *Harisiades*, Justice Douglas commented (at 598), "We repudiate our traditions of tolerance and our articles of faith based upon the Bill of Rights. . . ."

take a public position against these denaturalization actions (*supra*, pp. 7-8).

The court also stated (R. 106): "The Committee campaigned for repeal of the Smith Act of 1940 and in defense of those indicted under it." The fact is that the Smith Act of 1940 is the Alien Registration Act of 1940, 54 Stat. 670. Since this was clearly anti-alien legislation, petitioner opposed its adoption and campaigned for its repeal. Petitioner did *not* campaign against the adoption or for the repeal of the sedition section of the Act or in defense of persons indicted under that section. (Tr. 5922-24.)

CONCLUSION

Certiorari should be granted and the judgment below reversed.

Respectfully submitted,

JOSEPH FORER
DAVID REIN
Forer & Rein
711 14th St., N. W.
Washington 5, D. C.
Attorneys for Petitioner

APPENDIX A TO THE OPINION BELOW

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15960

AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN, PETITIONER

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, RESPONDENT

On Petition for Review of Order of the Subversive Activities Control Board

---

Decided December 17, 1963

Mr. Joseph Forer for petitioner.

Mr. George B. Searls, Attorney, Department of Justice, with whom *Mr. Frank R. Hunter, Jr.,* General Counsel, Subversive Activities Control Board, *Mr. Kevin T. Maroney, Mrs. Lee B. Anderson,* and *Mr. Robert L. Keuch,* Attorneys, Department of Justice, and *Messrs. Charles F. Dirlam* and *Peter P. Hanagan,* Attorneys, Subversive Activities Control Board, were on the brief, for respondent.

Mr. Edward J. Ennis filed a brief on behalf of the American Civil Liberties Union, as *amicus curiae.*

Before BAZELON, Chief Judge, PRETTYMAN, Senior Circuit Judge, and DANAHER, Circuit Judge.

PRETTYMAN, *Senior Circuit Judge*: Petitioner is before the court seeking to have set aside an order of the Subversive Activities Control Board issued June 27, 1960, requiring it to register with the Attorney General as a Communist-front organization pursuant to the provisions of the Internal Security Act, Section 7.[1] On January 8, 1962, after a petition for review had been filed, this court remanded to the Board for purposes not now relevant. The Board issued its Report on Reconsideration on March 18, 1962. That report and the original report of the Board are now before us. Oral argument was heard in October of 1962.

The American Committee for Protection of Foreign Born was organized in 1932 or 1933 and has its main offices or headquarters in New York City. Its activities have centered around "the foreign born with considerable effort and attention given to the legal and propaganda defense of individuals involved in deportation and denaturalization cases." Many of those defended have been members of the Communist Party, and many have not been. The Board also found that the Communist Party has a "continuing policy" in this area. The Board said:

> "The aims and purposes of the Party have been: (a) to seek to prevent the denaturalization and deportation of officers and members of the Party, and (b) to win the goodwill of the foreign born and obtain from them adherents to and support for the Party and for Party programs. The record also shows that it was the policy of the Communist Party to carry out and advance these aims and purposes through and by an organization separate from and not a part of the Communist Party as such."

---

[1] 64 STAT. 987, 989, as amended, 50 U.S.C. § 782(4).

The Board concluded that petitioner operates to serve this twofold purpose of the Communist Party and is substantially "directed, dominated, or controlled by the Communist Party of the United States, a Communist-action organization * * * and * * primarily operated for the purpose of giving aid and support to such Communist-action organization."

In reaching the result required by the evidence in this case, we need not attempt to resolve the constitutional questions advanced by petitioner. However, in determining whether there is a "preponderance" of evidence to support the Board's conclusions, it must be kept in mind that the Subversive Activities Control Act requires the Attorney General to make a particular showing as to Communist organizations before the requiring of registration can be constitutionally upheld. "'So long as no more is involved than exercise of the rights of free speech and free assembly, [an organization] is immune to such a restriction.' [Citing *Thomas* v. *Collins*, 323 U.S. 516, 540.] The present statute does not, of course, attach the registration requirement to the incident of speech, but to the incidents of foreign domination and of operation to advance the objectives of the world Communist movement—operation which, the Board has found here, includes extensive, long-continuing organizational, as well as 'speech,' activity."[2] "The statute is not applied like a spray to all persons who hold certain ideas or who may have become tainted by brushing against ideas or people."[3]

---

[2] Communist Party of the United States v. Subversive Activities Control Board, 367 U.S. 1, 90 (1961).

[3] Washington Pension Union v. Subversive Activities Control Board, —— U.S. App. D.C. ——, 322 F.2d 398 (D.C. Cir. 1963).

In an earlier opinion in this series of cases,[4] this court has said that, before it will sustain a finding that an organization is controlled and dominated by the Communist Party, the Government must present proof which is "specific, direct and timely." "[T]he Communist Party appears, and was declared by the Congress, [citing Sec. 2(15), Subversive Activities Control Act of 1950, 64 Stat. 989, 50 U.S.C. § 781(15)], to be a rigidly disciplined, well-organized, active organization. Its management is real, not happenstance, and its representation is definite, not whimsical. Mere membership does not establish active management or responsible representative capacity."[5]

In recent months the Supreme Court itself has inquired into the adequacy of proof of Communist infiltration before it would sanction a legislative inquiry into the membership lists of the involved organization. "The strong associational interest in maintaining the privacy of membership lists of groups engaged in the constitutionally protected free trade in ideas and beliefs may not be substantially infringed upon such a slender showing as here made by the respondent. While, of course, all legitimate organizations are the beneficiaries of these protections, they are all the more essential here, where the challenged privacy is that of persons espousing beliefs already unpopular with their neighbors and the deterrent and 'chilling' effect on the free exercise of constitutionally enshrined rights of free speech, expression, and association is consequently the more immediate and substantial."[6]

The Supreme Court has also spoken on the right of an

---

[4] National Council of American-Soviet Friendship v. Subversive Activities Control Board, —— U.S. App. D.C. ——, 322 F.2d 375 (1963).

[5] *Idem.*

[6] Gibson v. Florida Legislative Comm., 372 U.S. 539, 555-557 (1963).

organization and "its members and lawyers to associate for the purpose of assisting persons who seek legal redress for infringements of their constitutionally guaranteed and other rights." In this regard the Court said:

> "[L]itigation * * * is a means for achieving the lawful objectives of equality of treatment by all government, federal, state and local, for the members of the Negro community in this country. It is thus a form of political expression. Groups which find themselves unable to achieve their objectives through the ballot frequently turn to the courts. Just as it was true of the opponents of New Deal legislation during the 1930's, for example, no less is it true of the Negro minority today. And under the conditions of modern government, litigation may well be the sole practicable avenue open to a minority to petition for redress of grievances."[7]

With these principles in mind we turn to the case at bar. As we have noted, our petitioner devotes "considerable effort and attention * * to the legal and propaganda defense of individuals involved in deportation and denaturalization cases." Indeed this appears to be its main interest and activity. It has a constitution. It has officers and honorary officers. It holds an "Annual Conference" each year, to which any and all members of the public are welcome and in which they may participate upon payment of the registration fee. It has an executive committee, elected by the annual conference, and it has full-time, paid administration officers. It has been in continuous operation since its organization. It seems clear, and the Board found, that the active directing force in the Committee was its executive secretary, Abner Green. Second to him was his assistant, Harriett Barron. The evidence was overwhelming that the board of directors and the annual conferences were perfunctory,

---

[7] N.A.A.C.P. v. Button, 371 U.S. 415, 428-430 (1963).

as such boards and conventions so frequently are in unincorporated associations, and the real direction and control were in the hands of the chief executive officer. It was clearly established that Green and Barron were members of the Communist Party.

We have discussed at length the meanings of various provisions of the Internal Security Act of 1950.[8] We will not repeat that discussion here.

We inquire first into the management, or control, interrelationship of the Committee and the Communist Party. This is clause (A) of the statutory definition of a Communist front.[9]

It is not claimed, and the Board did not find, that Green or Barron were active in the management or control of the Party. But the first "criterion" in the statute[10] includes also the extent to which the active director of the named organization is a representative of the Party. A representative, obviously, need not be a participant in the management of his principal.

There was direct and specific testimony that Green was put at the head of the Committee by authority of the Party. The witness Lautner testified that he and one Landy, both of the Nationality Groups Commission of the Party, were delegated by the Central Committee of the

---

[8] Labor Youth League v. Subversive Activities Control Board, —— U.S. App. D.C. ——, 322 F.2d 364 (1963); National Council of American-Soviet Friendship v. Subversive Activities Control Board, —— U.S. App. D.C. ——, 322 F.2d 375 (1963); Veterans of the Abraham Lincoln Brigade v. Subversive Activities Control Board, —— U.S. App. D.C. ——, —— F.2d —— (1963).

[9] Sec. 3(4)(A), 64 STAT. 989, 50 U.S.C. § 782(4)(A).

[10] Sec. 13(f)(1), 64 STAT. 1000, 50 U.S.C. § 792(f)(1).

Party to decide upon the leadership of the Committee for Protection of Foreign Born. They named Green, "and that decision was carried out."

Green on the witness stand flatly contradicted Lautner, but this created a problem of credibility, which was for the trier of the facts who saw and heard both witnesses. The Act provides that findings shall be supported by a preponderance of the evidence, but evidence which is not believed by the trier of the facts has no weight in that scale. Of course the fact-finder cannot be arbitrary. But in the case before us that complication does not appear to be a real one on this point, despite the claims of the Committee.

Green said that he was made head of the organization through election by an annual convention. But convention election of officers already actually selected by one person or a small group of people is a commonplace. The election by the convention does not contradict Lautner's account.

There was direct and specific evidence that Green and Barron attended Party meetings, were advised of Party policies, and carried out those policies in the work of the Committee. In its published account (Political Affairs, Feb., 1951) of its 15th National Convention, the Party recited the advice of W. Z. Foster that the Party not become a "defense organization" but should carry on defense work through "[a] separate permanent non-partisan organization devoted exclusively to this purpose". In the next section of that same publication, the Civil Rights Congress, hailed as the logical inheritor of the fighting spirit, record and experiences of the I.L.D., and our petitioner Committee, "led by the devoted and indefatigable Abner Green," were coupled for praise, and "all progressives" were called upon to support their work. The witness Lautner, who, as we have said, was a minor Party official, testified that he was elected to the credentials com-

mittee of a conference of the Committee and was put on the executive committee of the Committee.

The evidence is direct and plentiful that the Party took an active part in the organizing of the regional Committees for Protection of Foreign Born, of which there were several. The evidence is ample that the officers of the regional Committees were members of the Party, sometimes minor officers in the Party, such as district directors, and that other such Party officials participated not only in the organization of these Committees but in their programs. It is clear that Green participated in such activities. There is much discussion in this record, and here, as to whether these local groups were autonomous organizations or were integral parts of our petitioner, the national Committee. We think the point is unimportant. It is abundantly clear that, whatever the technicalities may be as to the nature of these unincorporated associations, they were intermeshed with the national group, not only in policies but in operation. The issues of *The Lamp*, the Committee publication, on file here as exhibits, amply prove this situation.

In determining Green's status as a Party representative *vel non* the Board, under the statutory direction, took into consideration the extent to which the Committee supported the Party, was supported by it, and abided its policies; *i.e.*, the other three "criteria" in Section 13(f).

Turning then to these other "criteria", evidence of support of the Committee by the Party, and the identity of the positions and policies of the Party and the Committee, is ample to support the conclusions of the Board on those features. The record is replete with instances in those respects, and they seem to have been continuous from the early 1940's to the time of the hearing before the Board in 1954. We have no difficulty with these features of the findings.

Whether the Committee was operated primarily to aid

and support the Party, and the extent to which its resources and personnel were used to further or promote the objectives of the Party, which are clause (B) of the statutory definition and the third of the "criteria", pose questions. The Supreme Court has held that "primarily" does not necessarily mean principally; it may mean merely substantially.[11]

The Committee for Protection of Foreign Born (our petitioner) undoubtedly devoted the major portion of its efforts to contesting the deportation of aliens and promoting their naturalization. It furnished counsel and material in court cases in that area, issued statements, made pleas, and in every possible way battled in this behalf. It also fought the Internal Security Act and other statutes and proposed legislation, but the major thrusts of its offensive seem to have been the naturalization and deportation features of those measures. The Committee fought in behalf of many members of the Communist Party. There is some dispute as to the proportion of the persons it aided who were Party members. But there is no dispute as to the fact that it enlisted in behalf of many non-Communists.

Obviously the naturalization of its members and the prevention of their deportation were direct aims and purposes of the Communist Party. And a more subtle factor is present. The foreign-born constitute one of the likeliest reservoirs of potential disciples for Communism in this country. Many of these people are less fearful of foreign influence or less attuned to the basic concepts of this nation than are their second and subsequent generations. The Party made an official declaration along these lines early in the 1930's. To establish itself as the champion of the foreign-born and to imprint such an image of itself on the public mind would obviously be of major bene-

[11] Board of Governors v. Agnew, 329 U.S. 441, 446 (1947).

fit to the Party. But the protection of the rights of the foreign-born is not only a laudable objective; it is a basic one in this country. This is true not only theoretically and philosophically but also historically and factually. What, then, of an organization which vigorously devotes itself to the protection of the rights of all and any foreign-born who seek its help? Is it to be held a Communist front because the ends sought are Communist aims? Of course not. But, if in espousing causes which are Communist objectives an organization does so because of Communist control and direction, is it then a Communist front? To reach an answer to this question we think we must trace the pertinent considerations from their base. The Congress found and declared as a fact that the Communist movement is a world-wide revolutionary movement whose purpose it is, by any means deemed necessary, to establish a Communist totalitarian dictatorship throughout the world. The Supreme Court has told us that we must accept as established facts these findings, and others which we shall recite, of the Congress.[12] The Congress further found that the Communist dictatorship, vested in a foreign country, operates by causing the establishment in various countries of action organizations which are controlled by that foreign power. It has been established by a process of administrative and judicial inquiry in this country that the Communist Party of the United States is such an action organization.[13] The Congress further found as a fact that these action organizations operate to a substantial extent through "fronts", which in most instances are created or used in such manner as

---

[12] Galvan v. Press, 347 U.S. 522, 529 (1954); Communist Party of the United States v. Subversive Activities Control Board, 367 U.S. 1 (1961).

[13] Communist Party of the United States v. Subversive Activities Control Board, 367 U.S. 1 (1961).

to conceal their true character and purposes, and that a result of this method is to obtain support from persons who would not extend such support if they knew the true purposes of, and the actual nature of, the control and influence exerted upon such "fronts". The Congress also found as a fact that "One device for infiltration by Communists is by procuring naturalization for disloyal aliens who use their citizenship as a badge for admission into the fabric of our society."[14] Upon the basis of these Congressional findings, which, as we have said, we must accept, we evaluate the record before us.

In the foregoing context it is indubitably clear that any laudable, praiseworthy activity which is identified in the public mind with the Communist Party or with Communism, or is so identified in the minds of those being aided by the effort, or is identified as being within the community of policies advocated by the Party, is a benefit to and naturally an objective of the Party. The identification of itself with laudable causes would, of course, be a benefit to the Party, as it is to any organization. The identity of its prominent members with such causes is also a worthwhile project for an organization seeking power among the public. More subtle and less effective, but perhaps the only route to public acceptance available to a clandestine operator is to create a picture of a community of interest between its own causes and interests which bear public acclaim. This is indeed a subtle business, but if effectuated it would be a real and substantial aid and support to the Party. This is one of the theses of the statute. The Congress declared that the Communist movement attracts strength to itself by operating behind a facade of good deeds.

The statute does not seek the registration of an organization devoted to the protection of the rights of the

---

[14] 64 STAT. 989 (1950), 50 U.S.C. § 781 (14).

foreign-born. It seeks the registration of any organization the purpose of which, under control of the Party, by any activity, laudable or otherwise, is to strengthen the power of the Communist Party in this country.

The American Committee, by constant utterances and by its public attitude on issues apart from naturalisation and deportation, vigorously identified its cause with causes of the Communist Party. One cannot read its declarations without gaining an impression that the cause of Communists threatened with deportation is the cause of all people so threatened and that Communist leaders are leading the effort on behalf of all.

The official organ of the Committee was *The Lamp*, published monthly in New York. It reflects the activities of the organization. Copies of issues from March, 1944, to January, 1954, are in the record. This paper carried current accounts of developments in cases and events in which the Committee was interested. It followed the *Harisiades* case and the *Terminal Island Four* case throughout their histories. From time to time it announced new arrests in deportation proceedings—sometimes twenty-five at a time, or an alleged total of some three hundred. It carried small news notes on the progress of deportation cases, the grant or denial of bail, and the results of petitions for habeas corpus and appeals to the courts. It announced conferences and committee meetings, the formation of special defense committees in particular cases, and the publication of booklets on special cases. The meetings of the various area Committees for Protection of Foreign Born were announced in some detail. It appealed for funds and carried strong editorials condemning what it termed "The Deportation Drive". In short, *The Lamp* was a vigorous, wel prepared, constant advocate of the rights of the foreign-born. Some of its extended campaigns were for repeal of the Walter-McCarran Act (its name for the Internal

Security Act of 1950), support of the Lehman-Celler bill, the right to bail in deportation cases, opposition of denaturalization, and the status and problems of Mexican-Americans. From time to time it announced it was currently engaged in as many as 325 deportation cases and more than 40 denaturalization cases. Its total income ran as high as $43,500 and its expenses about that much. Abner Green served a federal prison sentence for refusing to reveal the names of contributors. It carried news about the activities of organizations of nationalities—Hellenic American Brotherhood, for example.

Through all these activities runs a prominent thread of Communist interest. The Committee took vigorous positions in respect to the Gerhardt Eisler affair. Eisler was foreign-born, to be sure, but this was not a naturalization or deportation matter; quite the contrary, in fact. The controversy which swirled about Eisler concerned his membership in the Communist Party and his refusal to testify before the House Committee.[18] The provisions of the Internal Security Act which were the targets of the Committee's attacks were those which required the deportation of aliens who were or had been members of the Communist Party. The Committee maintained that these provisions were premised on political opinion and threatened the freedom of all American people to their political opinions. This, of course, is Communist doctrine, but so far as this Government is concerned the point was put at rest by the Congressional findings to which we have referred. The deportation of Peter Harisiades, which the Committee called a test case and opposed with all the resources at its command, was on the ground that he was

---

[18] Eisler v. United States, 83 U.S. App. D.C. 315, 170 F.2d 273 (D.C.Cir. 1948), *cert. dismissed*, 338 U.S. 883 (1949); 84 U.S. App. D.C. 404, 176 F.2d 21 (D.C.Cir.), *cert. denied*, 337 U.S. 958 (1949).

a member of the Communist Party.[16] The Internal Security Act is directed also at Fascists and all sorts of totalitarians. But we do not find in this record evidence that the Committee fought in behalf of Fascist aliens. Indeed it expressed a hearty antagonism to adherents of that thesis. The Committee campaigned for repeal of the Smith Act of 1940[17] and in defense of those indicted under it. When, in March of 1952, the Supreme Court ruled on a group of cases involving problems of members of the Communist Party under various sections of the so-called McCarran Act, *The Lamp* said: "In a series of three opinions, the U. S. Supreme Court has made far-reaching decisions destroying many of the democratic rights accorded non-citizens and jeopardizing, thereby, the liberties of all Americans, native as well as foreign born. * * * In a statement, the ACPFB [this Committee] declared that the U. S. Supreme Court had deserted its duty to protect the Bill of Rights * * *." Of the same events *The Worker* (issue of March 16, 1952), an official organ of the Communist Party, said:

> "ANOTHER MONDAY—Supreme Court decision day—has passed and another gaping hole has been torn in the Bill of Rights by the war-thirsty Court majority.
>
> "In trampling upon the rights of foreign born non-citizens, the court has destroyed the constitutional rights of foreign-born citizens as well, and threatened the rights of the native born."

Testimony of Immigration officers was that the "bulk" of the three hundred deportation cases which the Committee at one time said it was defending involved allegations that the persons involved were members of the Communist Party. The terms used by *The Lamp*, the epithets

---

[16] Harisiades v. Shaughnessy, 342 U.S. 580 (1952).

[17] 54 STAT. 670.

applied to Government officials and their activities, are in tune with the utterances and attitudes of the Communist Party, expressed by its leaders and its publications.

Thus, then, the total picture in this record, viewed in the light of the statutory definition and the supporting "criteria", is of Abner Green as the directing force in the petitioner Committee, his selection for the post by authority of the Central Committee of the Communist Party, his attendance upon policy meetings of the Party, the vigorous support of him and the petitioner Committee by the Party, the identity of the objectives of the Committee and objectives of the Party, the similarity of Committee policies and Party policies in related areas, the notable Party overtones of Committee expression, and the direct involvement of Party members in a great proportion of the Committee's direct efforts. A Communist front is not declared by the Congress to be an action group; it is declared to be a facade behind which the Party, through designated representatives and control, works to strengthen itself in this country. When all the foregoing considerations are put together it seems to us that the conclusion of the Board that the Committee, our petitioner here, was a Communist front within the terms of the statute was well founded. In the *Communist Party* case the Supreme Court told us:

> "The existence of direction, domination, or control in each instance is an issue of particular fact. The question whether in the case of a given organization such a compulsion or impulsion arises from the complex of ties which link it to a foreign government or organization that it will, because of those ties alone, adhere in its conduct to decisions made for it abroad, is one which Congress has committed, in the first instance, to an expert trier of fact. * * * Our decision in *Rochester Telephone Corp.* v. *United States*, 307 U.S. 125, is especially apposite here. * * * [W]e said: 'Investing the Commission with the duty of ascertaining "control" of one company by another,

> Congress did not imply artificial tests of control. This is an issue of fact to be determined by the special circumstances of each case. So long as there is warrant in the record for the judgment of the expert body it must stand.' " [18]

Petitioner raises other points of law—the decision that the Communist Party is a Communist-action organization is not binding in this proceeding, and the registration provisions of the Internal Security Act are unconstitutional. We have ruled upon those points in other cases, to which we have referred, *supra*. Relying upon them we reject our present petitioner's contentions in those regards.

The order of the Board in this case will be

Affirmed.

BARNES, *Chief Judge*, dissenting: The Subversive Activities Control Act[1] aims to prevent a world-wide Communist conspiracy from accomplishing its purpose in the United States. §2(15). Section 3(3) defines "Communist-action organization" as an organization which "(i) is substantially directed, dominated, or controlled by the foreign government or foreign organization controlling the world Communist movement referred to in section 2 of this title, and (ii) operates primarily to advance the objectives of such world Communist movement . . . ." Those objectives are "the overthrow of existing government by any means necessary and the establishment in its place of a Communist totalitarian dictatorship." *Communist Par-*

---

[18] *Supra* note 13, at 40-41.

[1] 64 Stat. 987 (1950), 50 U.S.C. §§ 781 *et seq.* (1958).

ty v. *Subversive Activities Control Board*, 367 U.S. 1, 89 (1961).

Section 3(4) of the Act defines "Communist-front organization" as an organization that "(A) is substantially directed, dominated, or controlled by a Communist-action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement . . . ." The Communist Party is a Communist-action organization. But I think the Board has not shown that the American Committee for Protection of Foreign Born "(B) is primarily operated for the purpose of giving aid and support" to the Communist Party.[2] "The findings of the Board as to the facts, if supported by the preponderance of the evidence, [are] conclusive." §14(a). But what the Act means is a question of law for the court.

Congress might have made Communist control the sole test of a "Communist-front organization." But Congress chose to include in the definition a purpose element as well as a control element. Also, Congress chose not to outlaw the Communist Party or prohibit all of its activities. Besides the objectives of overthrowing the government and establishing a dictatorship, the Party has inno-

---

[2] Although Congress juxtaposed the word "substantially" in § 3(4)(A) with "primarily" in § 3(4)(B), the majority nonetheless says that "primarily" means "substantially." Majority Opinion p. 9. To support this construction of the Subversive Activities Control Act, reference is made to the Banking Act of 1933 where, in a widely different context, the word "primarily" appears alone. I think the word "primarily" in § 3(4)(B) must be given its ordinary dictionary meaning of "principally" or "chiefly."

I have not considered the Board's finding that the American Committee "(A) is substantially directed, dominated, or controlled" by the Communist Party.

cent objectives and innocent activities. These are known to include, *e.g.*, promoting public school integration. They have been shown to include contesting the deportation of aliens and promoting their naturalization. Congress did not say, and I think Congress did not mean, that a "purpose of giving aid" to a Communist-action organization in promoting an innocent objective makes an organization which it controls a Communist-front organization. I think the word "purpose" in §3(4) should be read in connection with the word "objectives" in §3(3). This context indicates that "purpose" is intended and should be understood to be limited to the purpose of aiding a Communist-action organization to advance the objectives of the world Communist movement.

The way in which the Act deals with Communist-front organizations confirms this understanding. The Act does not stop with requiring these organizations to register and furnish information. Most of the severe penalties prescribed in §§5(a) and 6(a) of the Act apply not only to members of Communist-action organizations but to members of Communist-front organizations also.[3] These sections of the Act make it "unlawful" for members of either sort of organization to hold any non-elective office or employment under the United States, or to be employed by any labor organization, or to use a passport, or even to apply for a passport. The validity of these severe penalties is not now before us. But in my opinion their severity shows that Congress had no intention of inflicting them on otherwise innocent people merely because of membership in otherwise innocent organizations that the Communist Party uses to advance an innocent aim.

---

[3] Section 5(a)(1)(D) prohibits employment in defense facilities of members of Communist-action organizations only. See also §§ 6(b), 7(d)(4), and 8.

Moreover a limited interpretation of the term Communist front is necessary if serious constitutional questions are to be avoided. The *Communist Party* case determines that constitutional rights including freedom of speech are not violated by enforcing the registration and information requirements of the Act against organizations that are primarily operated for the purpose of overthrowing the government and establishing a totalitarian dictatorship. 367 U.S. at 104-05. But it is quite doubtful that these same requirements may constitutionally be enforced against an organization that is not shown to have the same or similar purposes. It is even more doubtful that the severe penalties of §§5(a) and 6(a) may constitutionally be inflicted on the members of such an organization. Although the last question is not now before us, it is bound to arise if "Communist-front organization" is finally given the broad interpretation which this court now gives it.

Activities protected by the first amendment cannot be restrained because of association with an organization some of whose activities are not so protected. In *DeJonge* v. *Oregon*, 299 U.S. 353 (1937), the Supreme Court held that although the Communist Party was engaged in unlawful activities, punishing a member for helping the Party conduct a meeting that had only lawful purposes violated his constitutional right of free speech. The Court said:

> The holding of meetings for peaceable political action cannot be proscribed. . . . The question, if the rights of free speech and peaceable assembly are to be preserved, is not as to the auspices under which the meeting is held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects. [299 U.S. at 365.]

In *Scales* v. *United States*, 367 U.S. 203 (1961), the Court

sustained the constitutionality of a broad clause of the Smith Act directed against members of the Communist Party by interpreting the clause as intended to apply only to those members who intend to engage in or further the Party's sinister activities. The Court said: "Thus the member for whom the organization is a vehicle for the advancement of legitimate aims and policies does not fall within the ban of the statute . . . ." 367 U.S. at 229.[4]

This court does not directly express a conclusion with regard to the Committee's purpose. It does say that the Board's conclusion that the Committee "was a Communist front within the terms of the statute was well founded." Majority Opinion p. 15. But the court's opinion is devoted almost entirely to the subject of control by the Communist Party. The otherwise lawful purposes of an organization do not become unlawful simply because it is controlled by an organization that has the same lawful purposes together with other purposes that are unlawful. Neither the Board nor the court says the preponderance of the evidence supports a conclusion that the Committee is primarily operated for the purpose of aiding the Communist

---

[4] Cases such as *American Communications Ass'n* v. *Douds*, 339 U.S. 382 (1950); *Killian* v. *United States*, 368 U.S. 231 (1961); *Galvan* v. *Press*, 347 U.S. 522 (1954); *Rowoldt* v. *Perfetto*, 355 U.S. 115 (1957); *Gastelum-Quinones* v. *Kennedy*, 374 U.S. 469 (1963), are not to the contrary. The latest expression of Supreme Court doctrine makes plain that certain civil sanctions may be imposed based on evidence of a "meaningful association" with the Communist Party characterized by awareness of its "distinct and active political nature"; but such sanctions may not rest on evidence of an "association" with the Party—much less with one of its alleged front organizations—characterized by a belief that it is "a group solely trying to remedy unsatisfactory social or economic conditions, carry out trade union objectives, eliminate racial discrimination, combat unemployment or alleviate distress and poverty." *Gastelum-Quinones* v. *Kennedy*, *supra* at 473-74.

Party to advance the world Communist movement's objectives of overthrowing the government and establishing a totalitarian dictatorship. It seems to me clear that the preponderance of the evidence does not support such a conclusion. I would therefore set aside the Board's order.

I think the government failed to prove by a preponderance of the evidence that the Committee is primarily operated for the purpose of giving aid and support to the Communist Party in advancing *any* objective, even an innocent one.[5] As the court points out, both the American Committee and the Communist Party attacked and attempted to change our government's policy toward the foreign born, and defended individuals, many of them Communists, who were affected by the policy. But as the court also says, the Committee "enlisted in behalf of many non-Communists." Majority Opinion p. 9. I think the evidence does not show that the Committee was primarily operated for the purpose of giving aid to the Party in advancing any objective, rather than for the purpose of advancing the Committee's own objectives which the Party shared. To treat the Party's control of the Committee, and the overlapping of their memberships and objectives, as proving that the Committee was primarily operated for the purpose of aiding the Party would read the element of purpose out of the Act and make it unnecessary for the government to prove anything more than control.[6]

---

[5] The Board concluded that the Committee operates to serve a two-fold purpose of the Party: "(a) to seek to prevent the denaturalization and deportation of officers and members of the Party, and (b) to win the goodwill of the foreign born and obtain from them adherents to and support for the Party and for Party programs." Report and Order of the Board at 21 (June 27, 1960).

[6] Although conduct may sometimes show purpose, I think

Our first opinion in *Communist Party* v. *Subversive Activities Control Board*, 96 U.S.App.D.C. 66, 109-10, 223 F.2d 531, 574-75 (1954), states that the Board had found secret practices of the Party to have been engaged in for the purpose of concealing the Party's true nature and promoting its objectives, whereas the Party contended its purpose in using the secret practices had been to protect Party members from oppression. We said:

> This question, whether the secret practices of the Party are for the purpose of protecting the liberties of the members or are for the purpose of promoting the objectives of the Party, is a nebulous one. The two purposes may well overlap. In so far as protection of its members from public identification as Communists also promotes the objectives of the Party, both purposes could exist together. In a doubtful situation such as that on this point, we strike the finding as to purpose. [96 U.S.App.D.C. at 110, 223 F.2d at 575.]

I think we should strike the finding as to purpose in the present case. In the former case, the finding as to purpose was a subsidiary one and we affirmed the Board's order without it. In the present case, the American Committee's purpose is a crucial question. But this should not lead us to abandon the principle we formerly adopted.

When the control and the purpose that show an organization to be a Communist front are both established, its lawful activities do not insulate the organization and its members from the sanctions directed against fronts. But law-

---

the Committee's ambiguous conduct in this case does not support an inference of any purpose other than protection of the foreign born. In the *Communist Party* case, on the other hand, the proof included "long-continued, totally unwavering identity of policy lines" between the Party and the Soviet Union, including identical positions on "forty-five major international issues during thirty years." 367 U.S. at 59, 61.

ful activities cannot, in my opinion, make an organization a front.[7] A Communist-front organization is like a man with a false beard. The Subversive Activities Control Act directs us to remove the beard but not without proof that it is false.

---

[7] This court illustrates what seems to me its misunderstanding of the law by characterizing as "of course . . . Communist doctrine" the American Committee's position that laws requiring deportation of present or former Communist aliens "were premised on political opinion and threatened the freedom of all American people to their political opinions." Majority Opinion p. 18. This view of the deportation provisions is held by many loyal Americans. See also the Board's similar argument:

> "Even Abner Green's testimony that in defending Eisler in the deportation proceedings [the American Committee] was supporting the Bill of Rights, was consistent with the position of the Communist Party that 'To advocate action against Communists is to destroy the Bill of Rights.'" Report and Order of the Board at 29.

APPENDIX B

The Judgment Below

(Filed December 17, 1963)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,960

September Term, 1963

AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN,
Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, *Respondent.*

On Petition for Review of Order of the
Subversive Activities Control Board

Before: BAZELON, *Chief Judge,* PRETTYMAN, *Senior Circuit Judge,* and DANAHER, *Circuit Judge.*

Judgment

This case came on to be heard on the record from the Subversive Activities Control Board, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this court that the order of the Subversive Activities Control Board on review in this case is affirmed.

Per Senior Circuit JUDGE PRETTYMAN.

Dated: December 17, 1963.

Separate dissenting opinion by Chief Judge Bazelon.

APPENDIX C

Statute Involved

Pertinent provisions of the Subversive Activities Control Act of 1950 (which is Title I of the Internal Security Act of 1950), as amended, 64 Stat. 987, 50 U.S.C. 781, et seq., are as follows. (The Act's section numbers are followed by the appropriate section numbers of 50 U.S.C. in brackets.)

Sec. 2 [781]. As a result of evidence adduced before various committees of the Senate and House of Representatives, the Congress hereby finds that—

(1) There exists a world Communist movement which, in its origins, its development, and its present practice, is a world-wide revolutionary movement whose purpose it is, by treachery, deceit, infiltration into other groups (governmental and otherwise), espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship in the countries throughout the world through the medium of a world-wide Communist organization.

(2) The establishment of a totalitarian dictatorship in any country results in the suppression of all opposition to the party in power, the subordination of the rights of individuals to the state, the denial of fundamental rights and liberties which are characteristic of a representative form of government, such as freedom of speech, of the press, of assembly, and of religious worship, and results in the maintenance of control over the people through fear, terrorism, and brutality.

(3) The system of government known as a totalitarian dictatorship is characterized by the existence of a single political party, organized on a dictatorial basis, and by substantial identity between such party and its policies and the government and governmental policies of the country in which it exists.

(4) The direction and control of the world Communist movement is vested in and exercised by the Communist dictatorship of a foreign country.

(5) The Communist dictatorship of such foreign country, in exercising such direction and control and in furthering the purposes of the world Communist movement, establishes or causes the establishment of, and utilizes, in various countries, action organizations which are not free and independent organizations, but are sections of the world-wide Communist organization and are controlled, directed, and subject to the discipline of the Communist dictatorship of such foreign country.

(6) The Communist action organizations so established and utilized in various countries, acting under such control, direction, and discipline, endeavor to carry out the objectives of the world Communist movement by bringing about the overthrow of existing governments by any available means, including force if necessary, and setting up Communist totalitarian dictatorships which will be subservient to the most powerful existing Communist totalitarian dictatorship. Although such organizations usually designate themselves as political parties, they are in fact constituent elements of the world-wide Communist movement and promote the objectives of such movement by conspiratorial and coercive tactics, instead of through the democratic processes of a free elective system or through the freedom-preserving means employed by a political party which operates as an agency by which people govern themselves.

(7) In carrying on the activities referred to in paragraph (6) of this section, such Communist organizations in various countries are organized on a secret, conspiratorial basis and operate to a substantial extent through organizations, commonly known as "Communist fronts," which in most instances are created and maintained, or used, in such manner as to conceal the facts as

to their true character and purposes and their membership. One result of this method of operation is that such affiliated organizations are able to obtain financial and other support from persons who would not extend such support if they knew the true purposes of, and the actual nature of the control and influence exerted upon, such "Communist fronts."

(8) Due to the nature and scope of the world Communist movement, with the existence of affiliated constituent elements working toward common objectives in various countries of the world, travel of Communist members, representatives, and agents from country to country facilitates communication and is a prerequisite for the carrying on of activities to further the purposes of the Communist movement.

(9) In the United States those individuals who knowingly and wilfully participate in the world Communist movement, when they so participate, in effect repudiate their allegiance to the United States, and in effect transfer their allegiance to the foreign country in which is vested the direction and control of the world Communist movement.

(10) In pursuance of Communism's stated objectives, the most powerful existing Communist dictatorship has, by the methods referred to above, already caused the establishment in numerous foreign countries of Communist totalitarian dictatorships, and threatens to establish similar dictatorships in still other countries.

(11) The agents of Communism have devised clever and ruthless espionage and sabotage tactics which are carried out in many instances in form or manner successfully evasive of existing law.

(12) The Communist network in the United States is inspired and controlled in large part by foreign agents who are sent into the United States ostensibly as attaches

of foreign legations, affiliates of international organizations, members of trading commissions, and in similar capacities, but who use their diplomatic or semi-diplomatic status as a shield behind which to engage in activities prejudicial to the public security.

(13) There are, under our present immigration laws, numerous aliens who have been found to be deportable, many of whom are in the subversive, criminal, or immoral classes who are free to roam the country at will without supervision or control.

(14) One device for infiltration by Communists is by procuring naturalization for disloyal aliens who use their citizenship as a badge for admission into the fabric of our society.

(15) The Communist movement in the United States is an organization numbering thousands of adherents, rigidly and ruthlessly disciplined. Awaiting and seeking to advance a moment when the United States may be so far extended by foreign engagements, so far divided in counsel, or so far in industrial or financial straits, that overthrow of the Government of the United States by force and violence may seem possible of achievement, it seeks converts far and wide by an extensive system of schooling and indoctrination. Such preparations by Communist organizations in other countries have aided in supplanting existing governments. The Communist organization in the United States, pursuing its stated objectives, the recent successes of Communist methods in other countries, and the nature and control of the world Communist movement itself, present a clear and present danger to the security of the United States and to the existence of free American institutions, and make it necessary that Congress, in order to provide for the common defense, to preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government, enact appropriate legislation recognizing the

existence of such world-wide conspiracy and designed to prevent it from accomplishing its purpose in the United States.

Sec. 3 [782]. For the purposes of this title—

* * * * *

(2) The term "organization" means an organization, corporation, company, partnership, association, trust, foundation, or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together for joint action on any subject or subjects.

(3) The term "Communist-action organization" means—

(a) any organization in the United States (other than a diplomatic representative or mission of a foreign government accredited as such by the Department of State) which (i) is substantially directed, dominated, or controlled by the foreign government or foreign organization controlling the world Communist movement referred to in section 2 of this title, and (ii) operates primarily to advance the objectives of such world Communist movement as referred to in section 2 of this title; and

(b) any section, branch, fraction, or cell of any organization defined in subparagraph (a) of this paragraph which has not complied with the registration requirements of this title.

(4) The term "Communist-front organization" means any organization in the United States (other than a Communist-action organization as defined in paragraph (3) of this section) which (A) is substantially directed, dominated, or controlled by a Communist-action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title.

* * * * *

Sec. 5 [784]. (a) When a Communist organization as defined in paragraph (5) of section 3 of this title, is registered or there is in effect a final order of the Board requiring such organization to register, it shall be unlawful—

(1) For any member of such organization, with knowledge or notice that such organization is so registered or that such order has become final—

(A) in seeking, accepting, or holding any non-elective office or employment under the United States, to conceal or fail to disclose the fact that he is a member of such organization; or

(B) to hold any nonelective office or employment under the United States; or

(C) in seeking, accepting, or holding employment in any defense facility, to conceal or fail to disclose the fact that he is a member of such organization; or

(D) if such organization is a Communist-action organization, to engage in any employment in any defense facility; or

(E) to hold office or employment with any labor organization, as that term is defined in section 2(5) of the National Labor Relations Act, as amended (29 U.S.C. 152), or to represent any employer in any matter or proceeding arising or pending under the Act.

(2) For any officer or employee of the United States or of any defense facility, with knowledge or notice that such organization is so registered or that such order has become final—

(A) to contribute funds or services to such organization;

* * * * *

(b) The Secretary of Defense is authorized and directed to designate and proclaim, and from time to time revise, a list of facilities, as defined in paragraph (7) of section 3

of this title, with respect to the operation of which he finds and determines that the security of the United States requires the application of the provisions of subsection (a) of this section. The Secretary shall promptly notify the management of any facility so listed; whereupon such management shall immediately post conspicuously, and thereafter while so listed keep posted, notice of such designation in such form and in such place or places as to give reasonable notice thereof to all employees of, and to all applicants for employment in, such facility. Such posting shall be sufficient to give notice of such designation to any person subject thereto or affected thereby . . .

Sec. 6 [785]. (a) When a Communist organization as defined in paragraph (5) of section 3 of this title is registered, or there is in effect a final order of the Board requiring such organization to register, it shall be unlawful for any member of such organization, with knowledge or notice that such organization is so registered or that such order has become final—

(1) to make application for a passport, or the renewal of a passport, to be issued or renewed by or under the authority of the United States; or

(2) to use or attempt to use any such passport.

* * * * * *

Sec. [786].

* * * * * *

(b) Each Communist-front organization (including any organization required, by a final order of the Board, to register as a Communist-front organization) shall, within the time specified in subsection (c) of this section, register with the Attorney General, on a form prescribed by him by regulations, as a Communist-front organization.

* * * * * *

(d) The registration made under subsection (a) or (b) shall be accompanied by a registration statement, to be

prepared and filed in such manner and form as the Attorney General shall by regulations prescribe, containing the following information:

(1) The name of the organization and the address of its principal office.

(2) The name and the last-known address of each individual who is at the time of filing of such registration statement, and of each individual who was at any time during the period of twelve full calendar months next preceding the filing of such statement, an officer of the organization, with the designation or title of the office so held, and with a brief statement of the duties and functions of such individual as such officer.

(3) An accounting, in such form and detail as the Attorney General shall by regulations prescribe, of all moneys received and expended (including the sources from which received and the purposes for which expended) by the organization during the period of twelve full calendar months next preceding the filing of such statement.

* * * * *

(5) In the case of any officer or member whose name is required to be shown in such statement, and who uses or has used or who is or has been known by more than one name, each name which such officer or member uses or has used or by which he is known or has been known.

(6) A listing, in such form and detail as the Attorney General shall by regulation prescribe, of all printing presses and machines including but not limited to rotary presses, flatbed cylinder presses, platen presses, lithographs, offsets, photo-offsets, mimeograph machines, multigraph machines, multilith machines, duplicating machines, ditto machines, linotype machines, intertype machines, monotype machines, and all other types of printing presses, typesetting machines or any mechanical

devices used or intended to be used, or capable of being used to produce or publish printed matter or material, which are in the possession, custody, ownership, or control of the Communist-action or Communist-front organization or its officers, members, affiliates, associates, group, or groups in which the Communist-action or Communist-front organization, its officers or members have an interest.

(e) It shall be the duty of each organization registered under this section to file with the Attorney General on or before February 1 of the year following the year in which it registers, and on or before February 1 of each succeeding year, an annual report, prepared and filed in such manner and form as the Attorney General shall by regulations prescribe, containing the same information which by subsection (d) is required to be included in a registration statement, except that the information required with respect to the twelve-month period referred to in paragraph (2), (3), or (4) of such subsection shall, in such annual report, be given with respect to the calendar year preceding the February 1 on or before which such annual report must be filed.

(f) (1) It shall be the duty of each organization registered under this section to keep, in such manner and form as the Attorney General shall by regulations prescribe, accurate records and accounts of moneys received and expended (including the sources from which received and purposes for which expended) by such organization.

* * * * *

Sec. 9 [788]. (a). The Attorney General shall keep and maintain separately in the Department of Justice—

* * * * *

(2) a "Register of Communist-Front Organizations", which shall include (A) the names and addresses of all Communist-front organizations registered under section 7, and (B) the registration statements and annual reports filed by such organizations thereunder.

(b) Such registers shall be kept and maintained in such manner as to be open for public inspection . . .

* * * * * *

Sec. 10 [789]. It shall be unlawful for any organization which is registered under section 7, or for any organization with respect to which there is in effect a final order of the Board requiring it to register under section 7, or determining that it is a Communist-infiltrated organization, or for any person acting for or on behalf of any such organization—

(1) to transmit or cause to be transmitted, through the United States mails or by any means or instrumentality of interstate or foreign commerce, any publication which is intended to be or which it is reasonable to believe is intended to be, circulated or disseminated among two or more persons, unless such publication, and any envelope, wrapper, or other container in which it is mailed or otherwise circulated or transmitted, bears the following, printed in such manner as may be provided in regulations prescribed by the Attorney General, with the name or the organization appearing in lieu of the blank: "Disseminated by ....., a Communist organization"; or

(2) to broadcast or cause to be broadcast any matter over any radio or television station in the United States, unless such matter is preceded by the following statement, with the name of the organization being stated in place of the blank: "The following program is sponsored by ....., a Communist organization."

Sec. 11 [790]. (a) Notwithstanding any other provisions of law, no deduction for Federal income-tax purposes shall be allowed in the case of a contribution to or for the use of any organization if at the time of the making of such contribution (1) such organization is registered under section 7, or (2) there is in effect a final order of the Board requiring such organization to register under section 7

or determining that it is a Communist-infiltrated organization.

(b) No organization shall be entitled to exemption from Federal income tax, under section 101 of the Internal Revenue Code, for any taxable year if at any time during such taxable year (1) such organization is registered under section 7, or (2) there is in effect a final order of the Board requiring such organization to register under section 7 or determining that it is a Communist-infiltrated organization.

* * * * *

Sec. 13 [792]. (a) Whenever the Attorney General shall have reason to believe that any organization which has not registered under subsection (a) or subsection (b) of section 7 of this title is in fact an organization of a kind required to be registered under such subsection, or that any individual who has not registered under section 8 of this title is in fact required to register under such section, he shall file with the Board and serve upon such organization or individual a petition for an order requiring such organization or individual to register pursuant to such subsection or section, as the case may be. Each such petition shall be verified under oath, and shall contain a statement of the facts upon which the Attorney General relies in support of his prayer for the issuance of such order.

* * * * *

(f) In determining whether any organization is a "Communist-front organization", the Board shall take into consideration—

(1) the extent to which persons who are active in its management, direction, or supervision, whether or not holding office therein, are active in the management, direction, or supervision of, or as representatives of, any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and

(2) the extent to which its support, financial or otherwise, is derived from any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and

(3) the extent to which its funds, resources, or personnel are used to further or promote the objectives of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and

(4) the extent to which the positions taken or advanced by it from time to time on matters of policy do not deviate from those of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2.

(g) If, after hearing upon a petition filed under subsection (a) of this section, the Board determines—

(1) that an organization is a Communist-action organization or a Communist-front organization, as the case may be, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such organization an order requiring such organization to register as such under section 7 of this title; . . .

* * * * * *

Sec. 14 [793]. (a) The party aggrieved by any order entered by the Board under subsections (g), (h), (i), or (j) of section 13, or subsection (f) of section 13A, may obtain a review of such order by filing in the United States Court of Appeals for the District of Columbia, within sixty days from the date of service upon it of such order, a written petition praying that the order of the Board be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the Board shall file in the court the record in the proceeding, as provided in section 2112 of Title 28. Upon the filing of such petition the court shall have jurisdiction

of the proceeding and shall have power to affirm or set aside the order of the Board; but the court may in its discretion and upon its own motion transfer any action so commenced to the United States Court of Appeals for the circuit wherein the petitioner resides. The findings of the Board as to the facts, if supported by the preponderance of the evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material, the court may order such additional evidence to be taken before the Board and to be adduced upon the proceeding in such manner and upon such terms and conditions as to the court may seem proper. The Board may modify its findings as to the facts, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by the preponderance of the evidence shall be conclusive, and its recommendations, if any, with respect to action in the matter under consideration. . . .

* * * * *

Sec. 15 [784] (a) If there is in effect with respect to any organization or individual a final order of the Board requiring registration under section 7 or section 8 of this title—

(1) such organization shall, upon conviction of failure to register, to file any registration statement or annual report, or to keep records as required by section 7, be punished for each such offense by a fine of not more than $10,000, and

(2) each individual having a duty under subsection (h) of section 7 to register or to file any registration statement or annual report on behalf of such organization, and each individual having a duty to register under section 8, shall, upon conviction of failure to so register or to file any such registration statement or annual report, be punished for each such offense by a fine of not more than $10,000, or

imprisonment for not more than five years, or by both such fine and imprisonment.

For the purposes of this subsection, each day of failure to register, whether on the part of the organization or any individual, shall constitute a separate offense.

(b) Any individual who, in a registration statement or annual report filed under section 7 or section 8, willfully makes any false statement or willfully omits to state any fact which is required to be stated, or which is necessary to make the statements made or information given not misleading, shall upon conviction thereof be punished for each such offense by a fine of not more than $10,000, or by imprisonment for not more than five years, or by both such fine and imprisonment. For the purposes of this subsection—

(1) each false statement wilfully made, and each willful omission to state any fact which is required to be stated, or which is necessary to make the statements made or information given not misleading, shall constitute a separate offense; and

(2) each listing of the name or address of any one individual shall be deemed to be a separate statement.

(c) Any organization which violates any provision of section 10 of this title shall, upon conviction thereof, be punished for each such violation by a fine of not more than $10,000. Any individual who violates any provision of sections 5, 6, or 10 of this title shall, upon conviction thereof, be punished for each such violation by a fine of not more than $10,000 or by imprisonment for not more than five years, or by both such fine and imprisonment.

Sec. 16 [795]. Nothing in this title shall be held to make the provisions of the Administrative Procedure Act inapplicable to the exercise of functions, or the conduct of proceedings, by the Board under this title.